

LFC Requester:

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 16, 2020

Bill No: HB 38

Sponsor: Rehm
Short Title: Drugged Driving Penalties

Agency Name and Code AODA 264
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 38 was introduced in 2016 by Congressman Rehm, as HB 44. This version of the Bill addresses some of the problems found in 2016 HB 44

House Bill 38 amends Section 66-8-102, NMSA 1978, to prohibit driving with certain amounts of controlled substances or metabolites in the blood, in addition to amending the requirement for offenders to obtain an ignition interlock device upon conviction, to apply only to offenders who were “driving under the influence of intoxicating liquor or who had alcohol concentration in the blood or breath and the alcohol concentration resulted from alcohol consumed before or while driving.”

It specifies amounts for nine (9) common controlled substances or their metabolites that if found within a person’s blood within three hours of driving would constitute per se violations of driving while intoxicated (“DWI”) statute. The nine substances are: amphetamine; cocaine; cocaine metabolite, cocaethylene; heroin; heroin metabolite, morphine; heroin metabolite, 6-monoacetylmorphine; the active ingredient in marijuana, delta-9-tetrahydrocannabinol; methamphetamine; and, 3,4-methylenedioxymethamphetamine.

FISCAL IMPLICATIONS

There are no other reports on file that provide actual numbers of current DUI’s. However the 2016 HB 44, referenced the 2013 DUI statistics. AHO in 2016 reported that the HB 44 would have a fiscal impact because it adds an additional category of DUI offenses. AHO’s analysis demonstrated an increase in the number of Implied Consent Act hearings and calculated approximately 1 FTE.

SIGNIFICANT ISSUES

By establishing statutory limits for certain controlled substances or metabolites in the blood HB 38 would reduce the uncertainty inherent in the “impaired to the slightest degree” standard (currently in the law) and allow for much more efficient processing of DWI cases, where those limits are found in a driver’s blood.

HB38 would provide a clear standard for at least nine of the most common drugs that would be a per se violation of the DWI statute, similar to the per se alcohol limits of .08, and .04 for

commercial motor vehicles. Having a clear standard should reduce the need for expert testimony and argument that is frequently required to interpret the relationship between the drugs found in a person's blood and their behavior that a law enforcement officer believed made them incapable of safely driving a motor vehicle. In light of the potential for the passage of legalization of Marijuana laws, this Bill is a necessary guideline for public safety officers to implement when confronting drivers that may be impaired.

Having said that, HB38 does not provide for alternative means by which a non-alcohol offender who is convicted, may operate a motor vehicle prior to the expiration of their license revocation period, and since it does not prohibit those offenders from obtaining an ignition interlock license, many such offenders may still elect to do so, in order to continue operating a motor vehicle. Changing the interlock requirement to only offenders who had alcohol in their system at the time of driving may reduce the courts' need to monitor ignition interlock compliance as a condition of probation for offenders who had no alcohol in their system at the time of driving. However, given that the bill does not allow for any alternative method for non-alcohol offenders to drive prior to the expiration of their revocation period, many offenders may elect to obtain an interlock license in order to keep driving.

Removal of "to a degree that renders the person incapable of safely driving a vehicle" from §66-8-102(B) could lead to the interpretation that if you are driving with any drug in your system you are in violation of §66-8-102(B). A simple inclusion of language to "as set forth herein" to paragraph B resolves the issue and avoids any constitutional issues of §66-8-102(B) and its overall purpose and intent.

Additionally it is unclear whether having any drug, at any level in your system, while driving unlawful or whether it is only unlawful, when you have one of the nine (9) drugs/metabolites in your blood, at/or above the "per se" level, within three hours of driving.

Moreover, HB38 appears to imply that if a person has any alcohol concentration in their breath or drug or alcohol concentration in the blood they must be charged. This may conflict with §66-8-110(B) because 66-8-110(B) states that if a person's alcohol concentration is less than four one hundredths, that person is presumed not under the influence of intoxicating liquor. HB38 thus improperly establishes that a person presumed not under the influence as listed in HB38 must still be charged.

Changing the interlock requirement to only offenders who had alcohol in their system at the time of driving may reduce the courts' need to monitor ignition interlock compliance as a condition of probation for offenders who had no alcohol in their system at the time of driving. However, given that the bill does not allow for any alternative method for non-alcohol offenders to drive prior to the expiration of their revocation period, many offenders may elect to obtain an interlock license in order to keep driving.

PERFORMANCE IMPLICATIONS

AHO will see an increase of license revocation hearings, and may be unable to timely set and hold hearings by the strict 90-day statutory deadline.

ADMINISTRATIVE IMPLICATIONS

According to AHO, Section 4 of HB38 would change 66-8-111.1 to require law enforcement officers to serve notice of revocation on drivers before they have blood alcohol test results, triggering the 90-day requirement at the time of the arrest. This is different from the current system, where an officer only serves results upon a refusal or upon a breath test with a result above the legal limit. For blood tests, where an officer cannot know the results in the field until DOH Scientific Laboratory Division completes its required analysis, it is MVD that serves the NOR upon receipt of DOH Scientific Laboratory Division blood analysis reports. First service of the notice of revocation triggers the 90-day hearing requirement, meaning that if an officer immediately serves the notice of revocation before the blood alcohol tests results from DOH Scientific Laboratory Division are known, in many of these drugged-dwi cases the 90-day jurisdictional limit will have run before DOH Scientific Laboratory Division is able to return the chemical analysis results. Trying to schedule these hearings while waiting for DOH Scientific Laboratory Division results puts a large administrative burden on AHO, and presumably also MVD and DOH Scientific Laboratory Division. Additional hearings will incur additional travel related expenses, office-support, technology costs.

According to the AOC, establishing statutory limits for impairment by certain amounts of controlled substances or metabolites in the blood may reduce DUI case processing times, as the parties will be more certain of cases that may result in conviction when there are blood test results. Therefore, parties may be more likely to negotiate plea agreements earlier in the case, and there will be less need for extended pretrial hearings and expert testimony to establish levels for impairment.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

As in the 2016 HB 44, there is also no mention of any synthetic drugs, e.g., “Spice,” “K2,” and “bath salts.” There are no limits specified for any poly-drug combinations, which might be below the individual specified amounts but in combination could cause significant impairment.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS