

LFC Requester:	
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AGENCY BILL ANALYSIS
2017 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 Jan. 5, 2017
Bill No: HB 22

Sponsor: William "Bill" Rehm
Short DWI Drug Metabolite
Title: Amounts & Interlocks

Agency Code: 264
Person Writing Gary Cade
Phone: 505-507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	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: HB 22 is virtually identical to HB 44 introduced by Rep. Rehm in 2015 that was passed by the House, and HB 44 introduced in 2016 that was not heard. It would specify the amounts for nine 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. Currently the DWI law has no specific standards regarding drugs and only states, “It is unlawful for a person who is under the influence of any drug to a degree that renders the person incapable of safely driving a vehicle to drive a vehicle within this state.” (See, Sec. 66-8-102(B), NMSA.) The bill would also revise the statutes regarding license revocations and ignition interlock requirements to include the new *per se* limits regarding driving while under the influence of drugs, as well as including them in the statutes on admission of DWI test results and filing DWI charges.

HB 22 would also revise the ignition interlock requirements so that the interlock requirements would only apply to persons who were convicted of DWI while impaired by alcohol. It would also change the language permitting application for relief from the interlock requirements to specify the petition could be filed not be filed until five years had elapsed from the date of any fourth or subsequent DWI conviction, to address those persons who have more than four DWI convictions.

HB 22 would remove the minimum alcohol concentration levels of .08, and .04 for anyone driving a commercial motor vehicle, that now are the threshold requiring law enforcement officers to charge DWI. Instead any alcohol concentration found in a blood or breath test under the implied consent law would compel them to file a DWI charge. DWI charges would also be mandated for any person with one of the nine specified controlled substances or metabolites in their blood in excess of the prescribed limits.

It would also make certain grammatical corrections and gender-neutral references in the relevant statutes.

FISCAL IMPLICATIONS

It is unclear whether adoption of this bill will have an increased or a decreased fiscal impact. It could result in more persons being charged with DWI since the standard used to determine if

someone was under the influence of drugs, at least the most common drugs, will be clearer. However, it might result in less expert testimony required in some drug cases to explain whether the level of the drug detected rendered the driver “incapable of safely driving a vehicle.” In 2015 the New Mexico Public Defender quoted the National Highway Transportation Safety Administration that, “It is inadvisable to try and predict effects based on blood THC alone.” If persons are charged with DWI for drugs other than the nine listed or with amounts below the prescribed limits then they are unlikely to result in pre-trial pleas and litigation of those cases, to probably include expert testimony, is likely to result.

SIGNIFICANT ISSUES

HB 22 does not create any new crimes, does not add any new penalties, and does not affect the rights of anyone contesting a DWI or an administrative license revocation. It would provide a clear standard for at least nine of the most common drugs that would constitute 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.

The nine substances listed are some of the drugs most commonly used but other drugs which are abused are not included within the list. 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. It is not uncommon to find someone also using alcohol with drugs which in combination can result in impaired driving.

The minimum threshold specified for the active ingredient in marijuana, delta-9-tetrahydrocannabinol (“THC”), is five nanograms per milliliter of blood, the level set by an amendment in the House Judiciary Committee that was incorporated in the 2015 bill when it was passed by the House. It is the same level set by Colorado and Oregon (which have legalized possession and use of marijuana by statewide referendum) for the minimum threshold of THC as the basis of a DWI charge.

HB 22 would remove the existing language in the DWI subsection on drugs that a person must be under the influence “to a degree that renders the person incapable of safely driving a vehicle.” See, Sect 66-8-102(B), NMSA 1978. That could be considered an attempt to make the subsection on drugs parallel the subsection on alcohol that has long been interpreted to result in a criminal violation if the driver is impaired to the slightest degree. See, Sect. 66-8-102(A), NMSA 1978. A defendant is under the influence if drinking liquor “...affects him so that, to the slightest degree, he is less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle (a vehicle) with safety to himself and the public...” *State v. Sisneros*, 42 N.M. 500 (1938). See also, UJI 14-4501. “The statute gives notice, according to the plain meaning of the word ‘influence,’ that the legislature intends to criminalize a condition less than intoxicating but ‘influenced’ to any **degree** by alcohol, no matter how slight.” *State v. Neal*, 143 N. M. 341 (2007) (Emphasis in original). While the proposed change in the subsection involving drugs could address cases where the driver is under the influence of drugs besides the nine listed in HB 22 or has test results below the prescribed limits of the designated drugs, litigation is very probable on whether the slightest degree standard should also be applied to DWI cases based on consumption of drugs. Litigation is also likely on how the bill would be applied to persons charged with driving

under the influence of “beneficial” drugs like prescription medicines and even some over the counter medications. In all of those cases expert testimony will probably be necessary to determine the effects of the dosage(s) they had consumed, the test results and whether the drugs rendered them less able, to the “slightest degree,” either mentally or physically or both, to operate a vehicle with safety.

HB 22 would remove the current standards of .08, and .04 for persons driving commercial motor vehicles, from the statutes regarding driver’s license revocation proceedings and mandatory DWI charges. It appears that the proposed changes are meant to include those persons who are impaired to the slightest degree by alcohol but fall below the *per se* alcohol limits. Although appropriate in driver’s license revocation proceedings, by making it mandatory to charge DWI when there is any alcohol concentration, it poses a conflict with the preceding subsection which would be unchanged. Cf., Sec. 66-8-110(B), NMSA (“When the blood or breath of the person tested contains: (1) an alcohol concentration of less than four one hundredths, it shall be presumed that the person was not under the influence of intoxicating liquor.” See also, Sec. 29-1-1, NMSA (“It is hereby declared to be the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the state which are called to the attention of any such office or of which he is aware, and it is also declared to be the duty of every such officer to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken...” (Emphasis added.) The same problems would exist on whether it would be mandatory to charge someone who might be under the influence of drugs that are not one of the nine listed in HB 22, or are below the specified limits.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS