

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. 28, 2017
Bill No: HB 271

Sponsor: Jane E. Powdrell-Culbert
Short Driving Under Influence of
Title: Liquor or Drugs

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 271 would re-codify most of the existing driving under the influence of intoxicating liquor or drugs statute, rename it as the “Driving Under the Influence of Intoxicating Liquor or Drugs (“DUI”) Act, and slightly revise some penalties. The biggest change in the bill would make it illegal for anyone convicted of a second DUI offense to “purchase, possess or consume alcohol” in the state for one year, illegal for anyone convicted of a third DUI offense to purchase, possess or consume alcohol in the state for life—although they could apply for reinstatement of the privilege after ten years, and illegal for anyone convicted of a fourth DUI offense to purchase, possess or consume alcohol for life, with reinstatement of the privilege never allowed.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

HB 271 would re-codify most of the existing driving while intoxicated statutes as the DUI Act. It would add definitions for two terms which are both utilized in the existing driving while intoxicated (“DWI”) law but are not defined. “Bodily injury” would be, “an injury to a person that is not likely to cause death or great bodily harm ...but does cause temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person’s body.” Cf., Sect. 30-1-12(A), NMSA 1978 (great bodily injury). A person who is DWI and causes bodily injury would be guilty of aggravated DWI. “Commercial motor vehicle” would be defined virtually identically to the definition provided in the Commercial Driver’s License Act. See, Sect. 66-5-54(D), NMSA 1978. The current *per se* limit for operation of a commercial motor vehicle is an alcohol concentration of four one hundredths or more in the person’s blood or breath (half the limit for an ordinary motor vehicle) and would remain the same in the DUI Act.

The biggest change proposed in HB 271 would add an additional penalty for someone convicted of a second or subsequent DUI offense. A person convicted of their second DUI would “forfeit the privilege to purchase, possess or consume intoxicating liquor in the state for one year.” If someone was convicted of for the third time, they would “forfeit the privilege to purchase, possess or consume intoxicating liquor for life.” Ten years after the date of their third conviction, if they had “not been subsequently convicted of any crime where the person has been found to have purchased, possessed or consumed intoxicating liquor,” they could apply to a district court for restoration of their privilege to have and consume intoxicating liquor. If their privilege to have

alcohol was restored but they were subsequently convicted of a fourth DUI offense, their “privilege to purchase, possess and consume intoxicating liquor would be revoked and...not eligible for reinstatement.” Persons who had their privilege to have alcohol revoked would have to get a new driver’s license in the same format that persons under 21 obtain. The bill also would make it a violation of the Liquor Control Act for anyone to sell, serve or otherwise help someone procure alcoholic beverages if they knew or should have known that the recipient’s right to have alcohol had been revoked. Unless otherwise stated, violations of the Liquor Control Act are misdemeanors. See, Sect. 60-7A-25(A), NMSA 1978.

HB 271 would make some minor changes in the punishment now imposed for DWI. The maximum fine for a first offense would be clarified and set at \$800; the fine for a second offense would be set as \$500 to \$1,000. The incarceration periods would be the same, from the first offense through eighth or subsequent convictions. Probation terms of one to five years would be permitted.

HB 271 also states that if an offender’s sentence was suspended or deferred, in whole or in part, and they subsequently violate any condition of their probation, “the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.” Although the “no credit” language is almost the same language used in the current DWI statute (which now includes the phrase, “notwithstanding any provision of law,”) appellate courts have repeatedly it is inapplicable because of the language in a separate, general, statute regarding probation. “Whenever the period of suspension expires without revocation of the order (of probation), the defendant is relieved of any obligations imposed on him by order of the court and has satisfied his criminal liability for the crime.” See, Sect. 31-20-8, NMSA 1978. If the probationary period has expired without an order of revocation the defendant is relieved of any obligations under the order and cannot be punished further, even if a motion to revoke probation was filed before the end of their probation, regardless of the language in the DWI statute. See, *State v. Ordunez*, 2010-NMCA-095, aff’d, 2012-NMSC-024, and *State v. Lara*, 2010-NMCA-075.

The restrictions on alcohol possession and consumption are limited to “the state,” apparently the State of New Mexico. Unless it is a condition of probation, persons wanting alcoholic beverages could simply, and lawfully, go out of state to purchase and consume alcohol.

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

