

LFC Requester: _____

**AGENCY BILL ANALYSIS
2018 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. 19, 2018

Bill No: HB 34

Sponsor: William "Bill" Rehm

Agency Code: 264

Short DWI Blood Quantum &

Person Writing Gary Cade

Title: Ignition Interlocks

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	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 34 is virtually identical to bills previously bills introduced by Rep. Rehm in 2015, 2016 and 2017 to 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.) That section would be changed to, “It is unlawful for a person who is under the influence of any drug to drive a vehicle within this state.” 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 34 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 at or above the *per se* limits. 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 34 would include test results indicating controlled substances in a driver’s blood in violation of the specified limits as grounds mandating they be charged with DWI and to seize their driver’s license and issue a written notice of revocation and right to an administrative hearing. It would repeal the current limits of .08 for adults and .04 for persons driving a commercial vehicle as triggers for license revocation proceedings and substitute instead, “when the blood or breath of the person contains an alcohol concentration...that is unlawful

pursuant to (the DWI statute.” The .02 standard for minors would be unchanged.

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 enter pre-trial pleas and litigation of those cases, to probably include expert testimony, is likely to result.

SIGNIFICANT ISSUES

HB 34 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 for adults, .02 for minors, and .04 for drivers of 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 34 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). The proposed deletion in the subsection involving drugs could address cases where the driver is under the influence of any other drugs besides the nine listed in HB 34 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 may also be pursued 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 still be needed 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.

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