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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/2017

SPONSOR Powdrell-Culbert **LAST UPDATED** _____ **HB** 271

SHORT TITLE Driving Under Influence of Liquor or Drugs **SB** _____

ANALYST Rogers

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
Moderate Increase	Moderate Increase	Moderate Increase	Recurring	Various

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Moderate	Moderate	Moderate	Moderate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with and relates to HB 22, HB 49, HB 129, HB 397, SB 147.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Office of the Public Defender (LOPD)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Office of the Attorney General (OAG)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 271 repeals in its entirety 66-8-102 NMSA 1978, the current statute prohibiting driving under the influence (DUI) of intoxicating liquor or drugs. In its place, HB 271 enacts a new DUI statute and prohibits the purchase, possession, or consumption of alcohol by subsequent offenders. Additionally, the bill increases monetary fines for some DWI offenses.

The bill seeks to restructure portions of the current Section 66-8-102 throughout a newly drafted Driving Under the Influence statute, which would be renumbered elsewhere within the Motor Vehicle Code under Sections 66-1 NMSA 1978 through 66-1-8A NMSA 1978.

The act also seeks to add a new section to 60-7A NMSA, the current liquor control statute, to criminalize the sale of alcohol by vendors to those prohibited from purchasing alcohol under the new proposed DWI statute. The bill would impose a mandate that third and subsequent offenders, should they become eligible for a driver's license, obtain a license similar to those currently issued to drivers under 21 years of age.

FISCAL IMPLICATIONS

LOPD states the licensing and prohibition provisions would likely result in increased prosecutions for selling alcohol to those convicted of a second or subsequent DUI. While LOPD might be able to absorb the additional caseload, any increase in LOPD expenditures brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates. Should LOPD need to add additional attorneys, the average salary, without benefits, is \$70.3 thousand. Average District Attorney salaries, without benefits, are \$70.7 thousand.

The AOC explains there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions for sales to prohibited persons. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The OAG reports no fiscal impact from the bill.

Increased fine amounts will increase revenues to the variety of funds the fines are divided into which could help defray costs. These funds, include Crime Lab fund, Court Automation fund, Traffic Safety fund, the Jury and Witness fund, and the Judicial Education fund.

SIGNIFICANT ISSUES

The OAG submits the following detailed analysis of the changes proposed by HB 271:

- Rewrites and deletes provisions of the current prohibition on driving while under the influence of intoxicating liquor or drugs (see HB 271 as introduced, Sec. 4, pg. 3, lines 9 through 21 and compare Sec. 66-8-102(A) NMSA 1978);
- Removes approval of alcohol and drug screening program from the department of finance and administration (see HB 271 as introduced, Sec 5, pg. 4, lines 6 through 11 and compare Sec. 66-8-102(L) NMSA 1978);
- Removes discretion of the courts to lift interlock-requirement provision of DWI offenders who show good cause (see HB 271 as introduced, Sec. 5, pg. 4, lines 4 through 13 and compare Sec. 66-8-102(P) NMSA 1978);
- Increases the authorized fine for a first-time DWI offender to up to \$800 (currently that fee is up to \$500, see Sec. 66-8-102(E) NMSA 1978);

- Creates a prohibition on second-time DWI offenders from purchasing, possessing, or consuming alcohol for one year (see HB 271 as introduced, Sec. 6, pg. 8, lines 11 through 17);
- Increases the authorized fine for a second-time DWI offender from \$500 to a fee of between \$500 and \$1,000 (see HB 271 as introduced, Sec. 6, pg. 8, lines 22 through 23);
- Creates a prohibition on third-time DWI offenders from purchasing, possessing or consuming alcohol for life (see HB 271 as introduced, Sec. 6, pg. 9, lines 9 through 14);
- Increases the authorized fine for third-time DWI offenders from \$750 to a fee of between \$750 and \$1,000;
- Mandates that those convicted of subsequent DWIs who are under the proposed bill's prohibition from purchasing, possessing or consuming alcohol have the same format of driver's license currently issued to drivers less than 21 years of age;
- Permits the courts in all cases to impose on an offender the entirety of a sentence that could have originally been imposed in cases where the sentence was suspended or deferred in whole or in part and the offender subsequently violates any condition of probation (see HB as introduced, Sec. 7, pg 13, lines 9 through 13);
- Creates a new provision in the Liquor Control Act (Sec. 60-7A) criminalizing the sale or provision of alcohol, or aid in procuring alcohol, to DWI offenders prohibited from purchasing or possessing alcohol (see HB 271 as introduced, Sec. 9, pg. 15, lines 15 through 25).

HB 271, by repealing 66-8-102 NMSA 1978, would block the state from proceeding on any impaired-to-the-slightest degree cases in which a driver refuses to submit to chemical testing, tests below .08 grams of alcohol on a chemical test of either blood or breath, or in cases where the testing results are suppressed for whatever reason. According the OAG, the impaired-to-the-slightest degree theory is potentially considered to be the strongest provision and enforcement mechanism contained in New Mexico's driving while under the influence statute.

LOPD explains "those who have lost of the privilege of purchasing, possessing, or consuming alcohol under HB 271 are not subject to criminal or civil liability for purchasing, possession, or consuming alcohol. Instead, the proposed legislation makes it a violation of the Liquor Control Act 'to sell or serve alcoholic beverages to or to procure or aid in the procurement of alcoholic beverages' to such persons if the seller, server, procurer or aider 'knows or has reason to know' the recipient of the alcohol beverage has lost the privilege. This shifts of moral and legal responsibility away from DUI offenders is especially problematic because the DUI offenders subject to the ban are identifiable to members of the public only if they have obtained a driver's license. There is no similar provision for underage format identity cards."

The AOC states:

- 1) HB 271 reorganizes the existing Section 66-8-102 NMSA 1978 in enacting the Driving Under the Influence of Intoxicating Liquor or Drugs Act. Section 66-8-102(A) provides that it is unlawful for a person under the influence of intoxicating liquor to drive a vehicle in this state. HB 271 abolishes this provision while retaining the provision that 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.

2) HB 271 contains provisions requiring the forfeiture of the privilege to purchase, possess or consume intoxicating liquor in the state by a person with a certain number of convictions. HB 271 enacts a new statutory section within Chapter 60, Article 7A NMSA 1978, governing the sale and service of alcoholic beverages to prohibited persons in violation of the Liquor Control Act. Section 60-7A-25 provides a misdemeanor penalty for a violation of the Liquor Control Act not declared to be a felony.

3) Although also contained in the existing Section 66-8-102 NMSA 1978, the following requirements are not defined:

- Section 5(A): who decides if treatment program necessary and how?
- Section 5(C): how does the Corrections Department decide if it will provide treatment or require offender to obtain?

The AODA states:

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

LOPD explains that although they "may be able to absorb some increase in the additional litigation wrought by enactment of the proposed legislation, the increased litigation would likely result in a need for additional attorneys. There is no way to predict how many defendants in a given year will face prosecution for providing alcohol to DUI offenders subject to the ban, so there is no way to predict the number of cases that will result in additional litigation. However, given the relatively large number of DUI recidivists, it is likely that enactment of proposed legislation would require additional attorney resources at the District Attorney, Public Defender, and the Attorney General to protect their victims. Additional demand on court resources would also likely result."

DOT explains one of the department's performance measures is to reduce motor vehicle related DWI crashes, injuries and deaths. Prescribing penalties prohibiting a person convicted for the second time or subsequent times of driving under the influence of liquor or drugs from purchasing, possessing or consuming intoxicating liquor may result in a positive impact on DOT's safety goals and on the public driving on New Mexico roadways.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 271 and SB 238 relate to one another as well as HB 22, 31, 49, 74, 129, 151, and SB 136 & 174.

TR/al/jle