

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Rehm **ORIGINAL DATE** 02/24/17 **LAST UPDATED** 03/03/17 **HB** 397/aHCPAC
SHORT TITLE Driving Under the Influence of Alcohol or Drugs **SB** _____
ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Partially Duplicates HB271

Conflicts with HB22

Relates to HB22, HB23, HB49, HB74, HB300, HB31, SB136, HB129

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General Office (OAG)

Administrative Hearing Office (AHO)

New Mexico Department of Transportation (NMDOT)

Department of Health (DOH)

New Mexico Sentencing Commission (NMSC)

Public Defender Department (PDD)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 397 addresses the concerns posed by the Attorney General's Office.

Synopsis of Bill

House Bill 397 proposes to repeal and replace Section 66-8-102 NMSA 1978. The bill restructures the sections of the law and makes the following changes.

House Bill 397/aHCPAC – Page 2

- Removes “It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.”
- Increases the fine for a first DWI from \$500 to \$800.
- Increases the fine for a second DWI from \$500 to a fine of between \$500 and \$1,000.
- Increase the fine for third DWI from \$750 to a fine of between \$750 and \$1,000.

SIGNIFICANT ISSUES

According to the Attorney General’s Office (OAG), the impaired-to-the-slightest degree theory is considered to be one of the strongest provisions of the current DWI statute. Removing and not replacing 66-8-102(A) means the state would have no ability to proceed on cases wherein drivers refuse to submit to chemical testing, if drivers do submit to testing but the test results show a blood-alcohol content of less than .08 grams of alcohol, or in cases where the testing results are suppressed for whatever reason. As drafted, HB397 sets only a per se BAC and criminalizes any driver who tests at or above that level. Additionally, because the act would remove the impaired-to-the-slightest-degree provision that currently exists, HB397 would necessarily negate decades of appellate precedent. Moreover, HB397 would block state prosecutors 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.

The Department of Health (DOH) notes that with the removal of the language stating that “it is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state,” it appears that driving under the influence of alcohol under HB397 would be defined solely in terms of BAC concentrations. Impaired drivers without a BAC test (refusals, for example) might not be convicted of DWI without the previous language.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB397 duplicates HB271 except that HB271 requires an offender to forfeit the privilege to purchase, possess or consume intoxicating liquor.

Conflicts with HB22.

Relates to HBs 22, 23, 49, 74, 300, 31, and 129 and SB 136.

OTHER SUBSTANTIVE ISSUES

The OAG points out that the bill raises concerns because it fails to address blood chemical testing issues raised by the U.S. Supreme Court in *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016), and by the New Mexico Court of Appeals in *State v. Vargas*, 2016-NMCA-_____ (No. 33,718, October 25, 2016).

One of NMDOT’s safety goals 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 whether it is from purchasing, possessing or consuming intoxicating liquor would likely reduce recidivism, resulting in a positive impact on NMDOT’s safety goals and on the public driving on New Mexico roadways.

The DOH notes that in 2016 there were 37 more drunk driving crashes than in 2015.

ALTERNATIVES

Consider adding “it is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.”

POSSIBLE QUESTIONS

Who decides or how will it be decided if a treatment program is necessary?

ABS/jle/sb/al/jle