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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/15

SPONSOR Brown LAST UPDATED \_\_\_\_\_ HB 458

SHORT TITLE Offenses for Driver's License Revocation SB \_\_\_\_\_

ANALYST Malone

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$3.5	\$0.0	\$0.0	\$3.5	Nonrecurring	TRD-ITD Operating Budget

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

Attorney General's Office (AGO)

Department of Transportation (DOT)

### SUMMARY

#### Synopsis of Bill

House Bill 458 amends Section 66-5-29 NMSA 1978, regarding mandatory revocation of driver's licenses by the Motor Vehicle Division (MVD), to include a new provision for revocation for any offense under the federal Controlled Substance Act, the New Mexico Controlled Substances Act or any other drug offense.

The bill establishes that a person whose driving privileges or license has been revoked based on the new provision shall not be entitled to apply for or receive a new license until six months after the date that the conviction is final.

### FISCAL IMPLICATIONS

TRD anticipates that implementation of this bill will have minimal impact. Listed below are the required changes. They estimate a total of 70 hours will be needed to make necessary changes, at a cost of \$3,500.

DOT notes that if at some point the state does not meet the federal requirements outlined in the significant issues section, the cost to the state could be up to \$36 million dollars annually resulting from lost federal-aid funding.

## SIGNIFICANT ISSUES

Section 159, Title 23 of the United States Code<sup>1</sup>—Revocation or suspension of drivers' licenses of individuals convicted of drug offenses—establishes provides penalties for noncompliance with the code. A state meets the requirements of the section in one of two ways:

1. The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception:
  - a. The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of
    - i. Any violation of the Controlled Substances Act, or
    - ii. Any drug offense, and
  - b. A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual otherwise would have been eligible to have a driver's license issued or reinstated if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, **or**
2. The Governor of the State:
  - a. Submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification stating that he or she is opposed to the enactment or enforcement in the State of a law described in paragraph (c)(1) of this section relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and
  - b. Submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in paragraph (c)(1) of this section.

If a state fails to meet the requirements of the code outlined above, the following consequences exist:

1. Beginning in fiscal year 1996.-The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) on the first day of each fiscal year which begins after the fourth calendar year following the effective date of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.
2. Fiscal year 2012 and thereafter.-The Secretary shall withhold an amount equal to 8 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on the first day of each fiscal year beginning after September 30, 2011, if the State fails to meet the requirements of paragraph (3) on the first day of the fiscal year.

Since 1992, New Mexico has complied with 23 U.S.C. § 159(a)(3)(B), above. In 1992, the Legislature passed House Joint Resolution 11, which opposed the federal law. Also, in each year

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<sup>1</sup> See attachment one.

since 1992, the Governor has signed a yearly certification opposing this law.

However, since there are many new legislators, this issue needs to be explored to determine if the current legislature has the same position on this issue as the Legislature in 1992.

A person convicted under this bill would be eligible for a limited work/school license during the six-month revocation period.

## **RELATIONSHIP**

Relates to HB 131, which also amends Section 66-5-29 NMSA 1978.

## **TECHNICAL ISSUES**

TRD notes the following technical issues:

1. The bill requires that MVD impose a six-month revocation when it receives a conviction under the Controlled Substances Act, however, the federal courts are not required to report those convictions to MVD. Additionally, this bill would require that MVD know the statute for every federal drug offense and all New Mexico drug offenses.
2. There is a conflict between the six-month revocation in this bill and the one-year revocation MVD imposes when a vehicle is used in the commission of a felony. MVD would be required to impose the six-month revocation when it receives a conviction under the NM Controlled Substances Act even if a motor vehicle was used as part of that offense.
3. There is a conflict between this bill's revocation period for any drug offense and revocations imposed under Section 66-8-102 NMSA 1978 for driving while under the influence of drug. A definition of "drug offense" could resolve this conflict.

## **OTHER SUBSTANTIVE ISSUES**

AGO notes that there is not a strong nexus between administrative revocation under the Motor Vehicle Code and drug offenses. As the law currently stands, revocation occurs only for offenses relating to motor vehicles. By going beyond the scope of motor vehicle offenses, this statute could conceivably be amended to revoke drivers' licenses for the commission of any crime.

CEM/je

**23 USC 159: Revocation or suspension of drivers' licenses of individuals convicted of drug offenses**

Text contains those laws in effect on February 25, 2015

**From Title 23-HIGHWAYS**

CHAPTER 1-FEDERAL-AID HIGHWAYS

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**§159. Revocation or suspension of drivers' licenses of individuals convicted of drug offenses****(a) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.-**

(1) **BEGINNING IN FISCAL YEAR 1996.-**The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) on the first day of each fiscal year which begins after the fourth calendar year following the effective date of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

(2) **FISCAL YEAR 2012 AND THEREAFTER.-**The Secretary shall withhold an amount equal to 8 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on the first day of each fiscal year beginning after September 30, 2011, if the State fails to meet the requirements of paragraph (3) on the first day of the fiscal year.

(3) **REQUIREMENTS.-**A State meets the requirements of this paragraph if-

(A) the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception-

(i) the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of-

- (I) any violation of the Controlled Substances Act, or
- (II) any drug offense; and

(ii) a delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted; or

(B) the Governor of the State-

(i) submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after the effective date of this section a written certification stating that the Governor is opposed to the enactment or enforcement in the State of a law described in subparagraph (A), relating to the revocation, suspension, issuance, or reinstatement of drivers' licenses to convicted drug offenders; and

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i).

(b) **EFFECT OF NONCOMPLIANCE.-**No funds withheld under this section from apportionments to any State shall be available for apportionment to that State.

(c) **DEFINITIONS.-**For purposes of this section-

(1) **DRIVER'S LICENSE.-**The term "driver's license" means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

(2) **DRUG OFFENSE.-**The term "drug offense" means any criminal offense which proscribes-

(A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act; or

(B) the operation of a motor vehicle under the influence of such a substance.

(3) CONVICTED.-The term "convicted" includes adjudicated under juvenile proceedings.

(Added Pub. L. 102–143, title III, §333(a), Oct. 28, 1991, 105 Stat. 944 ; amended Pub. L. 102–388, title III, §327(a), Oct. 6, 1992, 106 Stat. 1547 ; Pub. L. 105–178, title I, §1103(l)(3)(E), June 9, 1998, 112 Stat. 126 ; Pub. L. 112–141, div. A, title I, §1404(g), July 6, 2012, 126 Stat. 558.)

## REFERENCES IN TEXT

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 105–178, which was approved June 9, 1998.

The effective date of this section, referred to in subsec. (a)(1), (3)(B)(i), is Nov. 5, 1990. See section 333(e) of Pub. L. 102–143, set out as a note below.

The Controlled Substances Act, referred to in subsecs. (a)(3)(A)(i)(I) and (c)(2)(A), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242 , which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

## AMENDMENTS

**2012-**Subsec. (a)(1), (2). Pub. L. 112–141, §1404(g)(1), designated par. (2) as (1), struck out " (including any amounts withheld under paragraph (1))" after "10 percent", added par. (2), and struck out former par. (1). Prior to amendment, text of par. (1) read as follows: "For each fiscal year the Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) on the first day of each fiscal year which begins after the second calendar year following the effective date of this section if the State does not meet the requirements of paragraph (3) on such date."

Subsec. (b). Pub. L. 112–141, §1404(g)(2), added subsec. (b) and struck out former subsec. (b) which related to period of availability of withheld funds and effects of compliance and noncompliance.

**1998-**Subsec. (a)(1), (2). Pub. L. 105–178, §1103(l)(3)(E)(i), substituted "(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of" for "(5) of" before "section 104(b)".

Subsec. (b)(1)(A)(i). Pub. L. 105–178, §1103(l)(3)(E)(ii)(I), substituted "section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)" for "section 104(b)(5)(A)".

Subsec. (b)(1)(A)(ii). Pub. L. 105–178, §1103(l)(3)(E)(ii)(II), substituted "section 104(b)(5)(B) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)" for "section 104(b)(5)(B)".

Subsec. (b)(1)(A)(iii). Pub. L. 105–178, §1103(l)(3)(E)(i), substituted "(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of" for "(5) of" before "section 104(b)".

Subsec. (b)(3). Pub. L. 105–178, §1103(l)(3)(E)(ii)(IV), substituted "section 104(b)(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)" for "section 104(b)(5)" in concluding provisions.

Subsec. (b)(3)(A). Pub. L. 105–178, §1103(l)(3)(E)(ii)(I), substituted "section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)" for "section 104(b)(5)(A)".

Subsec. (b)(3)(B). Pub. L. 105–178, §1103(l)(3)(E)(ii)(III), substituted "(5)(B) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)" for "(5)(B)".

Subsec. (b)(4). Pub. L. 105–178, §1103(l)(3)(E)(ii)(IV), substituted "section 104(b)(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)" for "section 104(b)(5)".

**1992-**Pub. L. 102–388 amended section generally, substituting "Beginning in fiscal year 1994" for "After second calendar year" as subsec. (a)(1) heading, "paragraphs (1), (3), and (5)" for "paragraphs (1), (2), (5), and (6)" in subsec. (a)(1) and (2), "Beginning in fiscal year 1996" for "After fourth calendar year" as subsec. (a)(2) heading, "paragraph (1), (3), or (5)" for "paragraph (1), (2),

or (6)" in subsec. (b)(1)(A)(iii), and "paragraph (1), (3), or (5)(B)" for "paragraph (1), (2), (5)(B), or (6)" in subsec. (b)(3)(B).

### **EFFECTIVE DATE OF 2012 AMENDMENT**

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### **EFFECTIVE DATE OF 1992 AMENDMENT**

Pub. L. 102–388, title III, §327(b), Oct. 6, 1992, 106 Stat. 1550 , provided that: "The amendments made by subsection (a) of this section [amending this section] shall take effect November 5, 1990."

### **EFFECTIVE DATE**

Pub. L. 102–143, title III, §333(e), Oct. 28, 1991, 105 Stat. 947 , provided that: "The amendments made by subsection (a) of this section [enacting this section] shall take effect November 5, 1990."

### **STUDY ON STATE COMPLIANCE WITH REQUIREMENTS FOR REVOCATION AND SUSPENSION OF DRIVERS' LICENSES**

Pub. L. 102–240, title I, §1094, Dec. 18, 1991, 105 Stat. 2025 , provided that:

"(a) **STUDY.**—The Secretary shall conduct a study of State efforts to comply with the provisions of section 333 of the Department of Transportation and Related Agencies Appropriations Acts, 1991 and 1992 [section 333 of Pub. L. 102–143 (1992 Act) enacted this section and provisions set out as a note above and repealed section 333 of Pub. L. 101–516 (1991 Act) which amended section 104 of this title and enacted provisions set out as a note thereunder], relating to revocation and suspension of drivers' licenses.

"(b) **REPORT.**—Not later than December 31, 1992, the Secretary shall transmit to Congress a report on the results of the study conducted under this section."