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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/21
 SPONSOR Wirth LAST UPDATED 03/04/21 HB _____
 SHORT TITLE Driver's License Suspension Penalties SB 7/aSJC/aSFC
 ANALYST Graeser

REVENUE (dollars in thousands)

| Estimated Revenue Impact | | | | | Recurring or Nonrecurring** | Fund(s) Affected |
|--------------------------|-------------|-------------|-------------|-------------|-----------------------------|----------------------|
| FY2021 | FY2022 | FY2023 | FY2024 | FY2025 | | |
| (\$74.8) | (\$74.8) | (\$74.8) | (\$74.8) | (\$74.8) | Recurring | TRD-Operating Fund |
| (\$1,161.5) | (\$1,161.5) | (\$1,161.5) | (\$1,161.5) | (\$1,161.5) | Recurring | DOT – Road Fund |
| (\$379.2) | (\$379.2) | (\$379.2) | (\$379.2) | (\$379.2) | Recurring | Local Governments |
| (\$313.0) | | | | | Nonrecurring | TRD – Operating Fund |
| (\$4,855.0) | | | | | Nonrecurring | DOT – Road Fund |
| (\$1,585.0) | | | | | Nonrecurring | Local Governments |

Parenthesis () indicate revenue decreases

Note: these fiscal estimates have been provided by TRD/MVD. See “FISCAL IMPLICATIONS” for details and methodology.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| FY21 | FY22 | FY23 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|------|--------|------|-------------------|---------------------------|--------------------|
| \$0 | \$49.6 | \$0 | \$49.6 | Nonrecurring | MVD Operating Fund |

Parenthesis () indicate expenditure decreases

Note: this bill may be related to SB-181 Payment Flexibility for Court Convictions.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Hearing Officer (AHO)

Taxation and Revenue Department (TRD) on original bill as amended by SJC

SUMMARY

Synopsis of SJC Amendment

The Senate Finance Committee amendment to Senate Bill 7 deletes Section 1 of the bill “SUSPENDING PRIVILEGES OF Nonresidents – REPORTING CONVICTIONS FAILURES TO APPEAR – FAILURE TO PAY. MVD will continue to notify the non-resident state when a

Senate Bill 7/aSJC/aSFC - Page 2

non-resident violator fails to appear or fails to pay a penalty assessment. When notified of a violation occurring in another state, MVD retains the authority to suspend the license of the resident violator if that violation in the other state would result in suspension in New Mexico. [The specification of the amendment should be Page 1, Line 15 through page 2, line 14 – not page 2, line 15. This misspecification would delete Section 2 heading. Deleting Section 1 of the bill reconciles TRD/MVD's comment that including Section 1 in the provisions of the bill would conflict with federal regulations – particularly with regard to motor carrier/CDL violations and subsequent suspensions for failure to appear or failure to pay. In addition, there may have been a conflict with the provisions of the Nonresident Violators Compact, however the SJC amendment resolves the conflicts.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 7 requires the Motor Vehicle Division (MVD) of TRD to reinstate by September 1, 2021, the driver's license of any person whose license has been suspended solely for failure to pay or failure to appear.

Synopsis of Original Bill

Senate Bill 7 provides that any person whose driver's license was suspended before July 1, 2021, for failure to appear (FTA) or pay a penalty assessment (FTP) may have the license reinstated without paying a reinstatement fee. The bill also eliminates MVD's authority to report to a non-resident driver's state of residence the driver's failure to appear or to pay a penalty assessment, or to suspend a nonresident's New Mexico driver's license for failure to appear or failure to pay a penalty assessment in the person's state of residence. The bill eliminates MVD's authority to report to a tribal court or other tribal authority a failure to appear or failure to pay a penalty assessment by a state resident who is subject to the tribe's jurisdiction.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature, or June 18, 2021.

FISCAL IMPLICATIONS

TRD explains the methodology for the impacts presented in the revenue table:

The reinstatement fee charged for the suspension type is \$27. Of the \$27 fee, \$25 is disbursed to the State Road Fund at 74.65 percent, and 25.35 percent is split between counties and municipalities. The remaining \$2 administrative fee is split between the State Road Fund at \$0.75, and \$1.25 goes to TRD's Operating Fund. The revenue impact listed above was calculated by taking the average number of suspensions posted from 2017, 2018, and 2019 and multiplying it by \$1.25. 2020 was excluded from the calculation due to a dramatic drop in the number of suspensions posted for that year, likely due to a reduction in drivers on the road (and therefore a reduction in citations and suspensions issued) as a result of the Covid19 Pandemic. Executive Order 2020-016 may have also impacted the number of suspensions for failure to appear in court or failure to pay a penalty assessment, as Law Enforcement Officers likely issued fewer citations for violations such as an expired license or registration.

The SJC amendment directs MVD to reinstate licenses for drivers whose licenses were suspended due to nonpayment or failure to appear. There are currently 250,081 unique

driving records in New Mexico that include a suspension for failure to pay a citation, failure to appear in court, or failure to comply with a citation. If each of these credentials are reinstated without the collection of the reinstatement fee, the total non-recurring loss of revenue, distributed over multiple funds as listed above, will be \$6,752,187.

MVD believes that courts will also lose a significant amount of revenue, given that there will no longer be consequence imposed by MVD for a driver admitting guilt to an infraction and then failing to pay the citation.

TRD's estimate is consistent with 59,833 average annual suspensions for failure to appear or failure to pay. TRD notes above there are currently 250,081 unique driving records in New Mexico that include a suspension for FTP or FTA. This seems to imply a large fraction of suspensions is never reinstated, forcing the driver to drive on a suspended license and incur subsequent citations or to forego the privilege of driving altogether. However, the base data for the revenue estimate should be the number of reinstatements of suspensions solely for FTA or FTP. It is uncertain if the Tapestry system can easily generate those numbers, but not all suspensions are reinstated.

The administrative hearing officer does not expect any increased workload or other impacts.

SIGNIFICANT ISSUES

TRD notes the following:

Having a license suspended due to failure to pay or failure to appear may compound an individual's struggle to make their way out of a difficult situation. If failure to pay is due to an inability to pay (as opposed to negligence), an individual's inability to pay may be exacerbated by having a suspended license. With a suspended license, it becomes more difficult to attend work or care for one's self or family. Other states have addressed this issue by allowing for partial payments based on the individual's income. This approach maintains accountability for endangering the motoring public through the violation of traffic laws while also allowing flexibility for those with income issues.

Currently, 16 states have either repealed driver's license suspensions for failure to pay or failure to appear. These are listed in the following chart.

| Member states w/ DLS Reform | Member States that never suspended for FTA/FTP |
|--|--|
| District of Columbia (2017 reform ended suspensions for FTP and FTA) | Iowa (does not suspend for FTA) |
| Hawai'i (2020 reform ended suspensions for FTP) | Kentucky (does not suspend for FTP) |
| Idaho (2018 reform ended suspensions for FTP and FTA) | South Carolina (does not suspend for FTA) |
| Maryland (2020 reform ended suspensions for FTP) | South Dakota (does not suspend for FTA) |
| Mississippi (2019 reform ended suspensions for FTP and FTA reform) | Virginia (does not suspend for FTA) |
| New York (2020 reform ended suspensions for FTP and FTA) | |
| Texas (2019 reform ended suspensions for FTP fees re: Driver Responsibility Program) | |
| Vermont (2016 reform ended suspensions for FTP except for traffic violations punishable by points, these suspensions last 30 days) | |
| Virginia (2020 reform ended suspensions for FTP) | |
| West Virginia (2020 reform ended suspensions for FTP) | |
| Wyoming (2018 reform ended suspensions for FTP) | |

As noted in the “Conflict, Duplication, Companionship, Relationship” below, this bill may be part of a general reform of some of the ways violators are treated by the judicial system and its partner, MVD.

TRD has concern the bill will conflict significantly with both federal regulations and other New Mexico statutes that are not amended by the bill. These issues are explained further in “Technical Issues” below. The concern is less with repealing the suspension provisions solely for FTP or FTA, but with the provisions of the bill relating to sending notice of nonpayment or failure to appear to other states when residents of those states incur a violation in New Mexico. The reciprocal notice of FTA or FTP from other states to New Mexico regarding FTP or FTA of New Mexico drivers incurring a violation in that state may not be an issue. The notice is required, but the suspension may not be required.

TRD has submitted several policy and technical comments:

The legislative intent of this bill is unclear, and if passed as written, the bill will cause significant conflict with both federal regulations and other New Mexico statutes that are not amended by the bill.

Although the bill removes both the notification and suspension authorities as stated above, the bill does not change anything regarding a driver’s obligation to comply with the citation. It is unclear if that is the bill’s intent.

ADMINISTRATIVE IMPLICATIONS

MVD has substantial concerns about the administrative consequences of the provisions of this bill.

This bill will require significant changes to MVD's operating system, Tapestry, as well as changes to MVD's website related to the processing of suspension reinstatement payments. Additionally, given that there is a significant number of suspensions already outstanding for failure to appear in court and failure to pay a citation.

The estimated time to develop, test and implement the changes is approximately 960 hours or 6 months for an estimated \$49,574 of staff workloads cost. This bill requires significant changes to Tapestry, including but not limited to:

- Remove all functionality related to the automatic reinstatement of all existing suspensions for failure to appear and failure to pay citation,
- Stop automatically suspending drivers who fail to pay in our jurisdiction or another jurisdiction.
- Since New Mexico notifies other states of failure to pay a citation manually, system changes are required to sunset the existing process.

Considering the effort, the effective due date of 6/18/2021 will not be feasible. A more feasible effective date would be 1/1/2022.

However, relative to the SJC amendment, TRD indicates it will initiate the reinstatements when the bill becomes effective and have the entire process completed within the fiscal year.

TECHNICAL ISSUES

TRD expresses significant concern with technical aspects of the bill:

The bill removes the language in Section 66-5-25(B) NMSA 1978 that authorizes MVD to notify motor vehicle administrators in other states that a resident of that state has failed to appear in court for a traffic citation or failed to pay a penalty assessment. However, the Non Resident Violator Compact (NRVC), of which New Mexico, the District of Columbia, and 43 other states are members, and is contained in Section 66-8-137.1 through 66-8-137.4 NMSA 1978, obligates MVD to notify another state or jurisdiction when a driver licensed in that jurisdiction fails to comply with the terms of a traffic citation, and also obligates New Mexico to initiate a suspension of driving privileges upon receipt of a report for failure to comply with the terms of a citation in another state.

Specifically, Article III, Paragraph C of the NRVC states: Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued.

Article IV, Paragraph A of the NRVC states: Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's

license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority.

Additionally, MVD is obligated to report failures to comply with traffic citations through Federal Regulations 384.208 and 384.209 if the individual cited was a commercial license holder or a non-commercial license holder cited while driving a commercial vehicle.

Federal Regulation § 384.208 states: § 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CLP or CDL holder licensed by another State, or disqualifying an out-of-State CLP or CDL holder's privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the CDLIS driver record.

Federal Regulation § 384.209 states: § 384.209 Notification of traffic violations.

(a) Required notification with respect to CLP or CDL holders.

(1) Whenever a person who holds a CLP or CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(2) Whenever a person who holds a foreign commercial driver's license is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations), in any type of vehicle, the licensing entity of the State in which the conviction occurs must report that conviction to the Federal Convictions and Withdrawal Database.

(b) Required notification with respect to non-CDL holders.

(1) Whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(2) Whenever a person from a foreign country who is unlicensed or holds a foreign non-commercial driver's license is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must report that conviction to the Federal Convictions and Withdrawal Database.

(c) Notification of traffic violations must be made within 10 days of the conviction.

However, 16 states that are members of the Nonresident Violator's Compact do not comply with suspension requirements for FTP or FTA pursuant to notice from the state where the nonresident violation occurred. The remedy might well be to delete the prohibition on New Mexico notifying other states of a nonresident FTP or FTA violation. New Mexico will continue to notify other states of the underlying violation so adding the notice of FTA or FTP will not incur any administrative problems or costs. Advice from the American Association of Motor Vehicle Administrators (AAMVA) should be sought regarding required actions when MVD receives notice of FTA or FTP from another state. As TRD notes, there are quite stringent federal regulations regarding motor carrier violations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill may be related to SB18, Payment Flexibility for Court Convictions. Senate Bill 181, unanimously endorsed by the New Mexico Sentencing Commission and the interim Courts, Corrections and Justice Committee, amends Section 31-12-3 NMSA 1978 to require a criminal sentencing court to assess a convicted person's ability to pay before imposing standard fines and costs related to the criminal proceeding. Where a person cannot pay, the court would be required to permit installment payments every 30 days, not to exceed 2 percent of the person's income, or \$10/month, whichever is greater. The person may make additional payments to reduce their debt.

SB7 repeals the penalty of sustaining a driver's license suspension solely for the failure to pay or failure to pay. This provides similar reform as SB181.

OTHER SUBSTANTIVE ISSUES

https://en.wikipedia.org/wiki/Driver_License_Compact discusses the International Driver's License compact. Two points are apparent from this discussion:

The **Driver License Compact** is an agreement between states in the [United States of America](#). The compact is used to exchange data between motorist's home state and a state where the motorist incurred a vehicular infraction. Not all states are members, and states respond to the data differently.^[1]

Originally, the Driver License Compact dealt with dangerous driving violations such as drunk driving, reckless driving, commission of a felony involving a motor vehicle and others. Later on, minor violations were included as well. Quite a few states joined in the 1960s, but it languished in the 1970s and part of the 1980s. In the late 1980s, there was a push by the [AAMVA](#) to get states to join and in the early to mid-1990s, quite a few states joined.

The Driver License Compact is no longer being pushed by the AAMVA as it is being superseded by the [Driver License Agreement](#) (DLA), which also replaces the [Non-Resident Violator Compact](#). However, as of 2011, there were only three member states to the DLA: Arkansas, Connecticut, and Massachusetts.

It is unknown whether the provisions of this bill are intended to interact with either the traditional Driver's License Compact or the NonResident Violator Compact in favor of positioning the state to join the Driver's License Agreement.

https://en.wikipedia.org/wiki/Driver_License_Agreement discusses the newer Drivers License Agreement:

Driver License Agreement (DLA) is an [interstate compact](#)... The DLA requires all states to honor licenses issued by other member states, report traffic convictions to the licensing state, prohibit a member state from confiscating an out-of-state driver's license or jailing an out-of-state driver for a minor violation; and maintain a complete driver's history, including withdrawals and traffic convictions including those committed in non-DLA states.

When a DLA member state receives a report concerning its drivers from a non-DLA member state, the member state will be required to treat the report the same as if it came from a member state. As with the previous compacts, the DLA requires a state to post all out-of-state traffic convictions to the driver's record, and a state must apply its own laws to all out-of-state convictions. As with the previous compacts, the DLA allows other jurisdictions to access motor vehicle records, in accordance with the Drivers' Privacy Protection Act (DPPA), and to transfer the driver's history if the driver transfers his license.

The DLA has some changes from the NRVC. Unlike the NRVC, under the DLA, adverse action can be taken against a driver for not responding to violations such as equipment violations, registration violations, parking violations, and weight limit violations. Other changes from the NRVC are that in order for a driver to keep his license under the NRVC, he just had to respond to the citation by paying the fine. With the DLA, the driver must comply with any order from the out of state court. An example would be a driver from [Arizona](#) getting cited for tinted windows while traveling through [Virginia](#), even though the tinted windows are legal back at home. The driver is ordered to fix the tint to meet Virginia law even though the driver left Virginia. Under the NRVC, to retain said license, the driver just pays the fine but with DLA, the driver must do what the court says including paying a fine, but also fixing vehicle equipment, and/or community service.