

LFC Requester:	Christine Boerner
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**AGENCY BILL ANALYSIS
2013 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

Date 01/23/2013

Original X **Amendment**
Correction **Substitute**

Bill No: HB 162--305

Sponsor: Rehm
 DWI DRUG
Short Title: METABOLIT

Reviewing Attorney General's Office
fsdfs A Trevor A. Rigler, AAG
Phone: 5052229013 **Email** trigler@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation	Recurring or Nonrecurring	Fund Affected	
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue	Recurring or Nonrecurring	Fund Affected		
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 162, if enacted, would amend §66-8-102 NMSA (“Driving under the influence of intoxicating liquor or drugs...”) as follows:

1. The bill bars the operation of a motor vehicle with particular amounts of specific substances and/or their metabolites in the driver’s blood.
2. The bill clarifies that the requirement for an ignition interlock device following a conviction under this section applies to convictions for driving while under the influence of alcohol where the offender had any concentration of alcohol in blood or breath within three hours of driving and the concentration was the result of alcohol consumed before or during the act of driving.
3. The bill cleans up language regarding the right of a driver to seek restoration of privileges and removal of ignition interlock.

This bill, if enacted, would also amend §66-8-110 NMSA (“Use of tests in criminal actions or civil actions...”) as follows:

1. The bill removes the specific amount of alcohol concentration required for an officer to charge a driver and adds the requirement that an officer charge a driver with DWI when a controlled substance or metabolite is present in the driver’s blood or breath as set out in the amended portion of §66-8-102.

This bill, if enacted, would also amend §66-8-111 NMSA (“Refusal to submit to chemical tests...”) as follows:

1. The bill removes the specific amount of alcohol concentration required for an officer to issue a revocation of driving privileges to a driver and adds the requirement that an officer issue such a revocation when a controlled substance or metabolite is present in the driver’s blood or breath as set out in the amended portion of §66-8-102.

This bill, if enacted, would also amend §66-8-111.1 NMSA (“Law enforcement officer agent for department...”) as follows:

1. The bill requires immediate written notice of revocation to a driver impaired by a controlled substance in the same manner as notice to a driver impaired by alcohol.

This bill, if enacted, would also amend §66-8-112 NMSA (“Revocation of license or privilege to drive...”) as follows:

1. The bill cleans up language governing the revocation hearing, removes the

specific amount of alcohol concentration required for sustaining a revocation, and includes as possible grounds for sustaining a revocation the presence of controlled substance and/or metabolite in the driver's blood or breath as set out in the amended portion of §66-8-102.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

This bill, if enacted, would likely result in additional DWI criminal cases filed and prosecuted in courts of jurisdiction.

Additionally, more DWI revocation matters would be heard before the Motor Vehicle Division and litigated in district courts.

Finally, additional scientific witnesses would be necessary for the successful prosecution of criminal DWI cases based on substance abuse-impaired drivers.

SIGNIFICANT LEGAL ISSUES

Because driving while under the influence of drugs is already a violation of §66-8-102, this bill does not create new crimes. Instead, the bill clarifies what constitutes a *per se* violation of that law by imposing clear scientific amounts of controlled substances and/or their metabolites. This removes vagueness from existing law.

The bill does not impose new penalties. The bill does not abridge any existing rights of those charged with DWI or contesting a revocation of driving privileges. If anything, the bill would raise the bar for successful prosecution of criminal DWI offenses and sustaining revocations.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

HB 31 – “DWI CONVICTIONS FOR SENTENCING” (Tim D. Lewis), which would treat felony DWI convictions as useable for purposes of habitual offender sentencing enhancement.

HB 32 – “INCREASE DWI PENALTIES” (Tim D. Lewis), which would increase penalties and impose mandatory incarceration periods for specific DWI convictions.

HB 52 - “FIRST-TIME DWI FOLLOW-UP PROGRAM” (Sheryl Williams Stapleton), which would require a follow-up program for persons who have completed a first offender program for a DWI conviction.

TECHNICAL ISSUES OR DRAFTING ERROR

None

OTHER SUBSTANTIVE LEGAL ISSUES

None

ALTERNATIVES TO ENACTING THIS BILL

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

None