

LFC Requester:	Klundt, Kelly
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**AGENCY BILL ANALYSIS
2014 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 that apply:

Original	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>February 3, 2014</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB190-305 Feb 3</u>

Sponsor:	<u>Rep. William "Bill" R. Rehm</u>	Reviewing	<u>Attorney General's Office</u>
Short	<u>DWI: Alcohol and Controlled</u>	Person Writing	<u>Michael P. Sanchez, AAG</u>
Title:	<u>Substances, and Interlock</u>	Phone:	<u>575-827-6000</u> Email <u>mpsanchez@nmag.gov</u>

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

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(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
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	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:

If enacted, HB190 would modify New Mexico’s DWI Law in the following ways:

- 1) Make it illegal to drive a vehicle while under the influence of any drug without regard to degree of impairment;
- 2) Adopt uniform reference to unlawful alcohol, controlled substance, and controlled substance metabolite concentrations in the driver’s blood or breath, without defining what those concentrations are;
- 3) Restrict the requirement for automotive ignition interlock to persons convicted of driving while under the influence of intoxicating liquor or alcohol (persons convicted of driving while under the influence of any drug would no longer be subject to the ignition interlock requirement); and,
- 4) Make minor grammatical corrections, and change gender references to gender neutral.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

Enactment of HB190 could require additional law enforcement and medical resources to conduct additional blood tests of persons suspected of driving while intoxicated.

SIGNIFICANT LEGAL ISSUES

Current state law requires the installation of ignition interlock devices on the automobiles of persons convicted of driving under the influence of drugs as well as driving under the influence of alcohol. See, *State v. Valdez*, 2013-NMCA-016, 293 P.3d 909 (the DWI statute mandate requiring installation of ignition interlock on vehicles driven by persons convicted of DWI does not violate equal protection, as applied to DWI offenders whose impairment was caused not by alcohol, but by drugs). HB190 would limit ignition interlock devices solely to those persons convicted of driving under the influence of alcohol. While present ignition interlock technology measures only breath alcohol levels, there may be merit to requiring persons who have been convicted of driving under the influence of an intoxicating drug to demonstrate they are not under the influence of alcohol before being permitted to start their vehicle.

In addition to the presumptive .08 BAC level, current state law also prohibits driving a vehicle while under the influence of intoxicating liquor to the "slightest degree." However, it is illegal to drive a vehicle while under the influence of any drug only if the person is impaired to a degree that renders the person incapable of safely driving a vehicle (this is higher than the "slightest degree" standard for alcohol). If enacted, HB190 would seem to modify the standard for drug

impairment to the "slightest degree" standard as well.

HB190 adopts a uniform reference to unlawful alcohol, controlled substance, and controlled substance metabolite concentrations in the driver's blood or breath, but does not define what those proscribed concentration levels are.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

N/A

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

HB191 addresses substantially the same issues:

- 1) HB191 adopts a uniform reference to unlawful alcohol, controlled substance, and controlled substance metabolite concentrations in the driver's blood or breath, and defines what those proscribed concentration levels are;
- 2) HB191 does not modify the standard for drug impairment to the "slightest degree" standard.

HB190 and HB191 should be studied for possible merger or joinder, as they seek to address substantially the same issues.

TECHNICAL ISSUES OR DRAFTING ERROR

HB190 adopts a uniform reference to unlawful alcohol, controlled substance, and controlled substance metabolite concentrations in the driver's blood or breath, but does not define what those proscribed concentration levels are.

OTHER SUBSTANTIVE LEGAL ISSUES

For uniform application of the "uniform reference to unlawful alcohol, controlled substance, and controlled substance metabolite concentrations in the driver's blood or breath", the following New Mexico statutes should also be amended:

Section 66-5-68, NMSA, concerning disqualification to hold a commercial driver's license should also be Amended. Section 66-5-68, NMSA, presently reads:

§ 66-5-68. Disqualification

A. The department shall disqualify a person from driving a commercial motor vehicle for at least thirty days if the federal motor carrier safety administration reports to the division that the person poses an imminent hazard.

B. The department shall disqualify a person who holds a commercial driver's license or who is required to hold a commercial driver's license from driving a commercial motor vehicle for a period of not less than one year, which shall run concurrently with any revocation or suspension action for the same offense, if the person:

- (1) refuses to submit to a chemical test when requested pursuant to the provisions of the Implied Consent Act;
- (2) is twenty-one years of age or more and submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of eight one hundredths or more;
- (3) submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of four one hundredths or more if the person is driving a commercial motor vehicle;
- (4) is less than twenty-one years of age and submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of two one hundredths or more; or
- (5) is convicted of a violation of:
 - (a) driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of Section 66-8-102 NMSA 1978, an ordinance of a municipality of this state or the law of another state;
 - (b) leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of Section 66-7-201 NMSA 1978 or an ordinance of a municipality of this state or the law of another state;
 - (c) using a motor vehicle in the commission of a felony;
 - (d) driving a commercial motor vehicle after the driver's commercial driver's license is revoked, suspended, disqualified or canceled for violations while operating a commercial motor vehicle; or
 - (e) causing a fatality in the unlawful operation of a motor vehicle pursuant to Section 66-8-101 NMSA 1978.

C. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years if any of the violations specified in Subsection B of this section occur while transporting a hazardous material required to be placarded.

D. The department shall disqualify a person from driving a commercial motor vehicle for life if convicted of two or more violations of any of the offenses specified in Subsection B of this section, or any combination of those offenses, arising from two or more separate incidents, but the secretary may issue regulations establishing guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to a period of not less than ten years. This subsection applies only to those offenses committed after July 1, 1989.

E. The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

F. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations or one hundred twenty days if convicted of three serious traffic violations, if the violations were committed while driving a commercial motor vehicle, arising from separate incidents occurring within a three-year period.

G. The department shall disqualify a person from driving a commercial motor vehicle for a period of:

- (1) not less than one hundred eighty days nor more than two years if the person is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded pursuant to the federal Hazardous Materials Transportation Act [FN1] or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver;
- (2) not more than one year if the person is convicted of a first violation of an out-of-service

order; or

(3) not less than three years nor more than five years if, during any ten-year period, the person is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded pursuant to that act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver.

H. The department shall disqualify a person from driving a commercial motor vehicle for sixty days if:

(1) the person has been convicted of two serious traffic violations in separate incidents within a three-year period; and

(2) the second conviction results in revocation, cancellation or suspension of the person's commercial driver's license or noncommercial motor vehicle driving privileges for sixty days.

I. The department shall disqualify a person from driving a commercial motor vehicle for one hundred twenty days, in addition to any other period of disqualification, if:

(1) the person has been convicted of more than two serious traffic violations within a three-year period; and

(2) the third or a subsequent conviction results in the revocation, cancellation or suspension of the person's commercial driver's license or noncommercial motor vehicle driving privileges.

J. When a person is disqualified from driving a commercial motor vehicle, any commercial driver's license held by that person is invalidated without a separate proceeding of any kind and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed.

K. The department shall disqualify a person from driving a commercial motor vehicle for not less than:

(1) sixty days if the person is convicted of a first violation of a railroad-highway grade crossing violation;

(2) one hundred twenty days if, during any three-year period, the person is convicted of a second railroad-highway grade crossing violation in a separate incident; and

(3) one year if, during any three-year period, the person is convicted of a third or subsequent railroad-highway grade crossing violation in a separate incident.

L. After disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall, within ten days, update its records to reflect that action. After disqualifying, suspending, revoking or canceling a nonresident commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

M. When disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall treat a conviction received in another state in the same manner as if it was received in this state.

N. The department shall post and enforce any disqualification sent by the federal motor carrier safety administration to the department that indicates that a commercial motor vehicle driver poses an imminent hazard.

O. The federal transportation security administration of the department of homeland security shall provide for an appeal of a disqualification for a commercial driver's license hazardous materials endorsement on the basis of a background check, and the department shall provide to a hazardous materials applicant a copy of the procedures established by the transportation security administration, on request, at the time of application.

P. New Mexico shall conform to the federal transportation security administration of the department of homeland security rules and shall "look back" or review a maximum of seven years for a background check.

Section 66-8-102.1, NMSA, concerning DWI guilty pleas should also be Amended. Section 66-8-102.1, NMSA, presently reads:

§ 66-8-102.1. Guilty pleas; limitations

Where the complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act disclose that the blood or breath of the person charged contains an alcohol concentration of:

A. eight one hundredths or more; or

B. four one hundredths or more if the person charged is driving a commercial motor vehicle.

Section 66-13-3, NMSA, concerning operating a motorboat while under the influence of intoxicating liquor or drugs should also be Amended. Section 66-13-3, NMSA, presently reads:

§ 66-13-3. Operating a motorboat while under the influence of intoxicating liquor or drugs

A. It is unlawful for a person who is under the influence of intoxicating liquor to operate a motorboat.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely operating a motorboat to operate a motorboat.

C. It is unlawful for a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to operate a motorboat.

D. Aggravated boating while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while operating a motorboat;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motorboat while under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Boating While Intoxicated Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. Every person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. The offender shall be ordered by the court to attend a boating safety course approved by the national association of state boating law administrators. An offender ordered by the court to attend a boating safety course shall provide the court with proof that the offender successfully completed the course within seven months of his conviction or prior to completion of his probation, whichever period of time is less. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than seven hundred fifty dollars (\$750). On a first conviction under this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or subsequent conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than seven hundred fifty dollars (\$750), or both;

provided that if the sentence is suspended in whole or in part, the period of probation shall not exceed one year. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than one thousand dollars (\$1,000).

Section 66-13-4, NMSA, concerning boating while intoxicated guilty pleas should also be Amended. Section 66-13-4, NMSA, presently reads:

§ 66-13-4. Guilty pleas; limitations

When a complaint or information alleges a violation of Section 3 of the Boating While Intoxicated Act, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 3 of that act, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to that act disclose that the blood or breath of the person charged contains an alcohol concentration of eight one hundredths or more.

Section 66-13-11, NMSA, concerning boating while intoxicated chemical tests should also be Amended. Section 66-13-11, NMSA, presently reads:

§ 66-13-11. Use of tests in criminal or civil actions; levels of intoxication; mandatory charging

A. The results of a test performed pursuant to the Boating While Intoxicated Act may be introduced into evidence in a civil action or criminal action arising out of the acts alleged to have been committed by the person tested for operating a motorboat while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of five one hundredths or less, it shall be presumed that the person was not under the influence of intoxicating liquor; or

(2) an alcohol concentration of more than five one hundredths but less than eight one hundredths, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

C. When the blood or breath of the person tested contains an alcohol concentration of eight one hundredths or more, the arresting officer shall charge him with a violation of Section 3 of the Boating While Intoxicated Act.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. The alcohol concentration in a person's blood or breath shall be determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. In a prosecution pursuant to the provisions of the Boating While Intoxicated Act, it is a rebuttable presumption that a person is in violation of the provisions of that act if he has an alcohol concentration of eight one hundredths or more in his blood or breath as determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. If the chemical test is administered more than three hours after the alleged boating while under the influence of intoxicating liquor, the test result is admissible as evidence of the alcohol concentration in the person's blood or breath at the time of the alleged boating and the trier of fact shall determine what weight to give the test result.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of operating a motorboat while under the influence of intoxicating liquor or drugs, the trial judge shall be required to inquire into past convictions of the person for operating a motorboat while under the influence of intoxicating liquor or drugs before sentence is entered in the matter.

ALTERNATIVES TO ENACTING THIS BILL

If HB190 is not enacted, the status quo will remain in effect.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB190 is not enacted, the status quo will remain in effect.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

HB190 adopts a uniform reference to unlawful alcohol, controlled substance, and controlled substance metabolite concentrations in the driver's blood or breath, but does not define what those proscribed concentration levels are.

HB190 and HB191 should be studied for possible merger or joinder, as they seek to address substantially the same issues.