

LFC Requester:	Eric Chenier
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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 X **Amendment**
Correction **Substitute**

Date February 10, 2014

Bill No: HB355-305 Feb 11

Agency Code

Sponsor: Rep. Cathrynn N. Brown

Reviewing Attorney General's Office

Short DWI; Implied Consent to

Person Writing Kevin A. Graham, AAG

Title: Testing; Death or Serious Injury

Phone: 505-222-9012 **Email** kgraham@nmag.gov

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:

At multiple places throughout this Bill there are changes to current statutory wording to change the identifier “his” (when referring to a suspected offender) to the words “person” or “that person’s” etc. Also, there are several occasions where updates in statutory references are made (to bring the statutory references current with appropriate state statute numbers) and there are slight changes in statutory language intended to clarify or simply current statutory wording. All such wording changes in the Bill appear not to make material changes to the statutes they propose to alter.

SECTION 2 of the Bill proposes a material alteration to current statutory language in §66-8-107 NMSA 1978 [Implied Consent to Submit to Chemical Test] by the addition of subparagraphs (C) and (D) to the existing statute.

New subparagraph (C) would create a new provision in the Implied Consent Act that would require law enforcement officers to “request” a driver submit to a chemical test of breath or blood (or both) for the presence of intoxicating liquor or drugs in any case where a motor vehicle accident has “result[ed] in death or great bodily injury to a person” *and* the law enforcement officer has “reasonable grounds to believe that a driver involved in the accident was under the influence of intoxicating liquor or drugs.” [Pursuant to current “Implied Consent” law at §66-8-107(A) NMSA 1978 a law enforcement officer would already have the authority/ability to have this testing performed. New subsection (C) would apparently require the officer to “request” the suspected offender submit to the chemical testing.]

New subparagraph (D) provides an exception to the required “request” for testing as created by subparagraph (C) if the chemical test “would interfere with or delay the provision of emergency medical treatment to any person involved in the accident.”

SECTION 5 of the Bill simplifies the language of §66-8-110(C) NMSA 1978 by removing wording stating that “the arresting officer shall charge the person” and replacing that wording with “The person tested shall be charged....” This simple change in language should have the effect of making it simpler for law enforcement officers to work together to handle the multiple tasks involved in processing an offender arrested for DWI and expediting

arrest/booking/charging process. This is accomplished by making it so that the individual arresting officer will be able to work on other duties related to the arrest and investigation (dealing with the vehicle, drafting reports, securing videos or other evidence, etc) while a second officer can prepare and file the charging documents (using information provided by the arresting officer and/or others.)

SECTION 6 of the Bill amends the language of §66-8-111 NMSA 1978 by adding language to existing subsection (A), adding a new subsection (B), re-numbering the other subsections of the statute and adding language to subsection (C) and adding language to subsection (D).

The language added to subsection (A) specifically references any person who is arrested as “a driver involved in an accident resulting in death or great bodily harm injury as provided in Subsection C of Section 66-8-107 NMSA” to the current types of offenders who, if the offender refuses a request from law enforcement to submit to chemical tests, a search warrant must be obtained by law enforcement from a judge in order to cause such a test to be mandatorily administered.

New subsection (B), as created by the Bill, states that “if a driver refuses upon request of a law enforcement officer to submit to a chemical test pursuant to Subsection C of Section 66-8-107 NMSA 1978, the law enforcement officer shall seek a warrant authorizing chemical tests of the driver’s blood or breath or both at the earliest practicable time.” [While the language added to subsection (A) would already provide law enforcement with the authority to seek a search warrant to get the chemical tests ordered by the court for such cases, this language in subsection (B) requires [“shall”] law enforcement to seek such a search warrant in cases where there has been a death or serious bodily injury.]

Re-numbered subsection (C) contains the statutory language authorizing the Department of Motor Vehicles to revoke a person’s driver’s license or nonresident operating privilege (for one year or until all conditions for license reinstatement are met, whichever is later) in situations where law enforcement has notified the department that the officer has reasonable grounds to believe the person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon request, the person refused to submit to a chemical test even after being advised the person’s license could be revoked for refusal. The Bill adds the language regarding a person who has been “arrested or involved in an accident resulting in death or great bodily injury as provided in Subsection C of Section 66-8-107 NMSA 1978” to the types of offenders who this revocation provision shall apply.

Re-numbered subsection (D) is similarly amended by the Bill to add persons “arrested or involved in an accident resulting in death or great bodily injury as provided in Subsection C of Section 66-8-107 NMSA 1978” to those whom the Department of Motor Vehicles shall suspend their driving licenses/privileges when the Department receives a statement signed under penalty of perjury from a law enforcement officer stating the officer has reasonable grounds to believe the person was under the influence of intoxicating liquor or drugs when the accident occurred.

SECTION 7 of the Bill also adds references to persons arrested “or involved in an accident resulting in death or great bodily harm” to the provisions of §66-8-112 NMSA 1978 regarding the process/procedures to be followed by the Department of Motor Vehicles on driver’s license revocation hearings and appeals.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

SIGNIFICANT LEGAL ISSUES

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

It appears this Bill is intended to insure that tests of a suspected DWI offenders breath/blood are requested and obtained by law enforcement in [almost] all cases where there has been a crash involving death or seriously bodily injury and that in cases involving DWI crashes with death or serious bodily injury that the offender’s driver’s license/privilege is revoked.

However, the language of SECTION 1, subsections (C) and (D) may serve an un-intended result of slowing law enforcement down from seeking breath/blood chemical testing of offenders in these types of crashes.

Under current law an officer is already empowered – under the Implied Consent Act – to seek chemical testing in any case where the officer has probable cause to believe the suspect has committed a DWI (whether there has been any sort of crash or not.) Also, under current law, if the suspect refuses to cooperate with testing, officers already know they can go to a magistrate or district court judge and get a search warrant for DWI chemical testing. By imposing a new provision making it so that an officer – dealing with a crash involving death or serious bodily injury – “shall” “request” the person to submit to testing imposes a new step on a process officers are already familiar and may cause confusion.

The language of new subsection (D), creates an exception for cases where a chemical test “would interfere with or delay the provision of emergency medical treatment to any person involved in the accident.” This language has the potential to create uncertainty for law enforcement officers on the scene as to what is required of them at any given moment. It is also possible this proposed language could cause officers to be concerned about liability (professional/civil) if an officer unintentionally “interferes with or delays” someone from receiving treatment when the officer is trying to have chemical testing evidence collected.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

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

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS NEEDED TO IMPROVE THIS BILL