

<b>LFC Requester:</b>	<b>Eric Chenier</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

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*{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**     **Amendment**      
**Correction**     **Substitute**   

**Date** January 22, 2015  
**Bill No:** HB 131

**Sponsor:** Rep. Tim D. Lewis  
**Short Title:** DWI TESTS & INTERLOCK  
TIME REQUIREMENTS

**Agency Code:** Attorney General's Office  
**Person Writing:** Margaret McLean  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

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

**BILL SUMMARY**

Synopsis:

HB 131 proposes the modification of: 1) Section 66-5-5 (persons not to be licensed); 2) Section 66-5-29 (mandatory revocation of license by division); and, 3) Section 66-8-102 (driving under the influence of liquor or drugs).

The period of license revocation depends on whether a DWI conviction is a first, second, or third offense and the breath or blood alcohol concentration. The length of revocation depends on both factors. In the cases of a fourth or subsequent DWI conviction, the revocation is for the remainder of the DWI offender’s life, subject to a five year review in district court.

The period of probation for a first DWI conviction pursuant to Section 66-8-102 is extended from one year to four years.

Current law provides for an ignition interlock device and an ignition interlock license based solely on the number of DWI convictions. HB 131 proposes an ignition interlock device and ignition interlock license are required for a certain period depending on two factors: 1) offender status (first, second, third, fourth and subsequent); and, 2) breath or blood alcohol concentration.

Any DWI offender with a lifetime ignition interlock device requirement may seek review for removal in the district court every five years.

If a DWI offender has not obtained an ignition interlock device and an ignition interlock license, that DWI offender must maintain sobriety and is required to participate in a court-approved sobriety monitoring program for the same period as the ignition interlock requirement. Sobriety shall be monitored daily. Failure to maintain sobriety shall result in a jail term of not less than forty-eight hours for each failure.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

## **SIGNIFICANT ISSUES**

HB 131 creates extended periods for ignition interlock devices and ignition interlock devices. Revocation of a license for the life of the offender is provided, subject to a five year review.

HB 131 relies on the breath or blood alcohol concentration level for a DWI conviction. Of note is that a DWI charged and prosecuted on the alternative theory of impairment to the slightest degree appears to be excluded from the ignition interlock device and ignition interlock license provisions. See Section 66-8-102(A): “It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.” The factors only consider a breath or blood alcohol concentration and the number of prior DWI convictions. HB 131 excludes a DWI conviction based on the slightest degree of impairment theory of DWI or a conviction for being under the influence of any drug; in both theories of a violation of Section 66-8-102, a breath or blood alcohol concentration level is not available.

The extension of the period of probation up to four years for a first offender may be problematic. The basic sentence for a first conviction is not more than ninety days in jail and not more than a \$500.00 fine. Extending the period of probation well beyond ninety days (likely for treatment or other rehabilitation services and monitoring) extends the jurisdiction of the court.

HB 131 addresses a significant loophole—DWI offenders who do not install ignition interlocks yet continue to drive. The proposal requires sobriety monitoring and maintenance for the same period as the installation of an ignition interlock device.

HB 131 adds a conclusive presumption that a breath or blood alcohol concentration is .16 when the offender refuses to submit to testing. Section 66-8-102(O). Conclusive presumptions are disfavored in criminal law. Rule 11-302 NMRA (presumptions in criminal cases); State v. Trossman, 2009-NMSC-034, ¶ 11, 146 N.M. 462, 212 P.3d 350.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

## **TECHNICAL ISSUES**

None noted.

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

None noted.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**

Include the ignition interlock device and ignition interlock license provisions for DWI convictions not obtained using a breath or blood alcohol concentration. (The current law does not distinguish between the different theories of prosecution and conviction for a DWI offense provided in Section 66-8-102).

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