

LFC Requester:	Conner Jorgensen
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**AGENCY BILL ANALYSIS
2015 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 16, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB 395</u>

Sponsor:	<u>Rep. Zachary J. Cook</u>	Agency Code:	<u>Attorney General's Office</u>
Short Title:	<u>Medical Malpractice Case Venues</u>	Person Writing	<u>Sally Galanter, AAG</u>
		Phone:	<u>505-222-9087</u>
		Email	<u>sgalanter@nmag.gov</u>

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)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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: NMSA 1978, Section 38-3-1 provides general provisions for venue if venue is not specifically designated in a particular statute. HB 395 would amend NMSA 1978, Section 38-3-1, “County in which civil action in district court may be commenced” to specifically exclude consideration of the residence of a personal representative, a conservator, a guardian, a guardian ad litem or a third person acting in any representative capacity in determining venue for a civil action. The proposed amendment also provides venue for cases involving medical malpractice claims to include the county where the patient received treatment, the county where the patient resided at the time of medical treatment or the county which is the principal place of business of the health care provider or any health care provider if the suit involves more than one. The subsection also defines “health care provider”, “medical malpractice lawsuit” and “patient” as used in the specific subsection.

HB 395 would amend Section 38-3-1 to make grammatical and technical corrections in Subsection B, Subsection D and Subsection F.

Subsection F of HB 395 also adds “Except as provided in Subsection H of this section”... to emphasize that suits brought against transient persons or nonresidents may be brought in any county subject to the provisions set forth in Subsection H. This additional language appears to be included to limit venue from being based on where a third party representative, having no personal stake in the outcome, resides.

Subsection H of HB 395 adds a new subsection to Section 38-3-1 to specifically exclude considering the residence of a personal representative, a conservator, a guardian or a guardian ad litem when determining venue in any civil action.

Subsection I of HB 395 limits the venue for a medical malpractice action to the county where the patient received the medical treatment that is the basis for the lawsuit; the county that is the principal place of business for the health care provider or any of the health care providers if more than one was involved at the time the lawsuit was filed; or the county the patient resided when she or he received medical treatment.

FISCAL IMPLICATIONS

There are no fiscal implications for this office.

SIGNIFICANT ISSUES

This bill appears to be intended to address concerns raised by potential forum shopping including removing the potential for third parties without a real stake in the outcome [personal representatives, conservators, guardian etc.] to determine venue in medical malpractice cases.

There is currently no venue statute in either the Wrongful Death Act [Sections 41-2-1 et seq.] or the Medical Malpractice Act [Sections 41-5-1 et seq.]. The venue for a medical malpractice action will continue to be governed by the general venue statute [NMSA 1978, § 38-3-1], and if HB 395 is enacted that general venue statute will impose new limitations on the venue for a specific subset of lawsuits (medical malpractice suits).

PERFORMANCE IMPLICATIONS

There are no performance implications for this office.

ADMINISTRATIVE IMPLICATIONS

There are no administrative implications for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

N/A