

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/07

SPONSOR Gardner LAST UPDATED _____ HB 337

SHORT TITLE No Seat Belt as Negligence in Civil Actions SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Health (DOH)
 Administrative Office of the Courts (AOC)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 337 amends the Safety Belt Use Act (NMSA Section 66-7-373) to allow the failure to use a safety belt or child restraint device to be introduced in a civil action to prove fault or negligence and to allow such failure to serve to limit or apportion damages of an insurer or party to the action.

SIGNIFICANT ISSUES

This bill would establish the so-called "seat belt defense" in New Mexico. Current law provides that failure to use a safety belt or child restraint device *shall not* constitute fault or negligence and *shall not* limit or apportion damages. This bill reverses that prohibition, and specifically allows such failure to be used to prove fault or negligence or to apportion damages. The New Mexico Supreme Court in *Thomas v. Henson*, 102 N.M. 326 (1985) held that creation of the defense is a matter for the legislature, not the judiciary. Several New Mexico cases have referred to the section amended by this bill, and have held that the nonuse of available seat belts by

passengers cannot be used to reduce their recovery of damages. *Norwest Bank N.M. v. Chrysler Corp., Inc.*, 127 N.M. 398, (Ct. App. 1999); *Mott v. Sun Country Garden Product Inc.* 120 N.M. 261 (Ct. App. 1995).

OTHER SUBSTANTIVE ISSUES

New Mexico is a contributory negligence state. When awarding damages from an auto crash, a jury is allowed to consider both parties' actions and apportion fault. For instance, if the plaintiff is awarded \$10 but the jury finds he was at fault by 50%, the person is awarded \$5. Currently the law prohibits a litigant from introducing evidence that a person failed to use a seat belt as evidence of that person's negligence and, perhaps, the person contributed to their injuries. This amendment would allow that evidence to be introduced in a civil action and for a jury to consider such a failure when deciding the percentage of negligence.

EO/nt