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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/11
 LAST UPDATED 03/04/11 **HB** _____

SPONSOR Martinez, R.C.

SHORT TITLE Certain Motor Vehicle Penalty Conviction **SB** 195/aSJC

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal – probably less than \$20.0		Minimal – probably less than \$20.0	Nonrecurring	General Fund and other MVD operating funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Committee (SJC) amendment to Senate Bill 195 removes a revision in the original bill that would have allowed a court 20 days to submit notice of a conviction to the Motor Vehicle Division (MVD) of the Taxation and Revenue Department instead of the 10 days currently allowed in the statute.

Synopsis of Original Bill

Senate Bill 195 amends Section 66-3-1 NMSA 1978 of the Motor Vehicle Code and others sections of law to change the penalty for a violation of the law from a traffic misdemeanor to a penalty assessment misdemeanor. It provides that anyone cited under this section shall not be convicted if they produce to the court evidence that they were registered at the time of the violation.

The bill adds similar provisions to Section 66-3-13, Section 66-5-2, and Section 66-5-39 NMSA

1978 to clarify that anyone cited under these sections shall not be convicted if they produce to the court evidence that they had the required registration, licensure, or insurance in force at the time of the violation. The bill adds references to appropriate other statutory sections authorizing suspension to Section 66-5-32 NMSA 1978.

The bill separates and clarifies the statutes referring to suspended and revoked licenses, which are currently combined in Section 66-5-39, into a statute for driving while license suspended, Section 66-5-39, and a new statute for driving while license revoked, Section 66-5-39.1.

The bill amends Section 66-8-116, Penalty Assessment Misdemeanors -- Definition -- Schedule of Assessments by making certain offenses which are currently traffic misdemeanors into penalty assessment misdemeanors.

The bill amends Section 66-8-135 by adding a provision requiring the court to notify the Department of Motor Vehicles if a defendant fails to appear on a charge relating to motor vehicles; clarifies that the court is to send the Department the abstract after final disposition; extends the time for the court to send the abstract from 10 days to 20 days; eliminates certain data elements from the abstract; and adds that failure to comply with this section shall be judicial misconduct if it is willful.

FISCAL IMPLICATIONS

This change will allow the Court to dismiss the case and save the Court and taxpayer's time and money from trying to collect a fine, issuing a bench warrant if the fine is not paid, etc.

The Administrative Office of the Courts (AOC) reports that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. It is anticipated that these changes will enable the judiciary to be somewhat more efficient in the disposition of traffic cases. Thus there will be some positive financial and administrative implications, although it is impossible to quantify the potential effect.

The Taxation and Revenue Department (TRD) has no information regarding the number of additional penalty assessment misdemeanors that might be issued as a result of this bill; however, they would probably just offset the current penalties. The bill has a low impact on the revenue distribution process. Once programming changes are made to MVD information technology (IT) systems, staff will need to verify that the changes are being performed. Programming changes and testing would need to be completed by June 30, 2011. New revenue codes for penalty assessments would require FDB staff to recalculate the distribution to beneficiaries. The new penalty assessment misdemeanors added in the bill include the following:

- Improper Display of Registration Plate -- \$25
- Failure to notify of change of name or address -- \$25
- Lost or damaged registration, plate or title -- \$20
- Permitting unauthorized minor to drive – changed from \$10 to \$50
- Permitting unauthorized person to drive -- \$25
- Minor without helmet on motorcycle -- \$300
- Obstruction of driver's view -- \$50
- Television within view of driver -- \$50
- Improper equipment – clarification of specific statutory section offenses, fine changed

from \$10 to \$25

SIGNIFICANT ISSUES

The SJC amendment addresses a technical concern regarding compliance with the Federal Motor Carrier Safety Administration (FMCSA) which mandates that convictions be sent within 10 days of the date of convictions/final disposition (Title 49 C.F.R. § 384,209).

According to the AOC:

The proposed changes promote efficiency and hence contribute cost reduction while maintaining fairness and the protection of the public.

Making the violation of Section 66-3-1 a traffic misdemeanor will reduce confusion between law enforcement, which currently issues citations for the violations of this statute, the Sentencing Commission, whose charge table does not include this statute, and the courts, who would like to cooperate with the Sentencing Commission in the use of its charging table in their new case management system.

Adding provisions that persons charged with failure to have valid registration, licensure, or insurance shall not be convicted if they can produce proof in court will expedite a just resolution of these cases for defendants and for the courts.

Separating the statutory sections relating to suspended and revoked licenses will reduce confusion for defendants, law enforcement, and the courts, and help expedite a just resolution of these cases.

Making offenses listed as additions to Section 66-8-116 penalty assessments instead of traffic misdemeanors removes the possibility that a defendant cited for such an offense shall be subject to potential incarceration. Such a change still protects the public safety and welfare while simplifying the enforcement of these provisions of the Motor Vehicle Code.

The proposed changes to Section 66-8-135 clarify what information courts are required to send to the Motor Vehicle Department at which point in the case. The time for reporting is extended to twenty days so as to allow time for defendants to appeal. Appeals must be made to district court from courts of limited jurisdiction within fifteen days of final disposition. NMRA 2011 Rules 6-703(A); 7-703(A), and 8-703(A). The Department has told the courts it makes no use of the information proposed to be eliminated from the abstract. This information will still be maintained in the records of the courts; it simply will not be sent to the Department. Finally, it is fair to clarify that failure to send the abstract must be willful in order to be judicial misconduct.

The Administrative Office of the District Attorney interprets the bill:

- 1) **Section 66-3-1; Vehicles Subject to Registration – Exceptions:** Adds a new subsection, 'C', that states the violation of this section is a misdemeanor; however, if at the time the person appears in Court and produces proof of registration which was valid at the time of the issuance of the citation, there will be no conviction. This change will allow the Court to dismiss the case and save the Court and taxpayer's time and money

from trying to collect a fine, issuing a bench warrant if the fine is not paid, etc.

- 2) **Section 66-3-13; Evidence of Registration to be Signed and Exhibited on Demand:** Amends this one paragraph section and makes two sub-sections, 'A' and 'B'. Sub-section 'A' substitutes a gender neutral phrase for 'his' and clarifies that the 'duplicate' is of the registration evidence. Sub-section 'B' provides that a person charged under this section shall not be convicted if the person produces in Court proof of a signed registration which was valid at the time the citation was issued. Same analysis re: impact as above.
- 3) **Section 66-5-2; Drivers Must be Licensed:** Adds a new sub-section, 'C', which provides that a person charged under this section shall not be convicted if the person produces in Court proof of a driver's license issued to the person which was valid at the time of the arrest. Same analysis re: impact as above.
- 4) **Section 66-5-32; Period of Suspension or Revocation:** This bill adds two new sections to the exception, as set out in sub-section 'A', which allows the suspension of a driver's privilege to drive for more than one year. **Section 60-7B-1** requires the suspension of a minor's driver's license for two years when that minor is convicted for a third time for buying, attempting to buy, receiving, possessing or permitting himself to be served with alcoholic beverages. Since this section is already law, it will not add any additional burden to the department by increasing the number of suspension hearings they must hold. **Section 66-5-39.1** is a new section added by this bill and will be analyzed under that section.
- 5) **Section 66-5-39; Driving While License Suspended – Penalties:** The penalty for driving while a driver's license is revoked is removed from this section and placed in a new section, 66-5-39.1. In sub-section 'B', changes the 'shall' to 'may' for the additional punishment of having the driver's car immobilized for thirty (30) days. This change could result in more drivers with suspended licenses continuing to drive their cars.
- 6) **Section 66-5-39.1; Driving While License Revoked – Penalties:** This new section moves all of the language about driving on a revoked license, and the subsequent penalties, from Section 66-5-39 to this new section. Sub-section 'A' allows the Court to order a certified alternative sentencing program for drivers convicted of driving on a revoked license, a provision that is not available under the current law. A driver who pays for their alternative program may have that amount subtracted from any fine that was imposed, up to \$1,000. Alternative programs help divert defendants out of the court system and ultimately save the taxpayers' money. Sub-section 'B' is identical to the language in current Section 66-5-39 (A), as it applies to revoked licenses. Sub-section 'C' is also identical to the language in current Section 66-5-39 (B) and does NOT change the mandatory requirement of immobilizing the driver's car for 30 days. Based on this bill, a driver convicted of driving on a suspended license MAY have their car immobilized; but a driver convicted of driving on a revoked license SHALL have their car immobilized, unless it meets the exception set out in the statute. Sub-section 'D' allows the division to not issue a new license for an additional year from the date the person could have applied for a new license.
- 7) **Section 66-5-205; Vehicle Must be Insured or Owner Must have Evidence of Financial Responsibility – Penalties:** Sub-section 'C' changes sentence structure, but makes no substantive changes. Sub-section 'E' changes the penalty for this misdemeanor from a fine of not more than \$300 to imprisonment for not more than 90 days or a fine of not more than \$300 or both. This change could increase the number of drivers sentenced to jail and therefore increase the costs of housing them in jail. New sub-section 'F' provides for no conviction if the driver produces in court proof of financial responsibility at the time the citation was issued. This section will help reduce the number of drivers in

the court system and thus save taxpayer money.

8) Section 66-8-116; Penalty Assessment Misdemeanors – Definition – Schedule of

Assessments: This section adds numerous new misdemeanors and their penalty assessment; including, but not limited to: improper display of registration plate; failure to notify of change of name or address; lost or damaged registration, plate or title; permitting unauthorized person to drive; minor without helmet on motorcycle; obstruction of driver's view; and television within view of driver. It also increases the assessments in two categories: permitting unauthorized minor to drive and improper equipment.

- 9) **Section 66-8-135; Record of Traffic Cases:** New sub-section 'B' requires the Court to notify the department if a defendant fails to appear for a motor vehicle code violation or any other law or ordinance relating to motor vehicles. Under the current law, this requirement is included with the requirement to notify the department of a judgment and sentence. Both items had to be reported within 10 days of the event. Under this amendment, there is no time limit on the reporting of a failure to appear. Without such a requirement, the Court may not notify the department within a timely manner. New sub-section 'C' contains the language from current sub-section 'B' about reporting cases to the department that have been sentenced. It increases the time the Court has to report these cases from ten (10) days to twenty (20) days and changes the language of 'judgment and sentence ... on a charge of violating' to 'a final disposition on a conviction for violation of'. It also eliminates the need for the Court to notify the department of cases where the bail was forfeited or the charges dismissed. Additional information that will no longer be required to be reported to the department includes the itemization of the costs assessed to the defendant (only the total costs will have to be reported) and whether or not the defendant was represented by counsel, waived the right to counsel and the name and address of the counsel. These changes will certainly save the Court time and thus save taxpayers money as there will be fewer cases to report to the department and less information in the cases that are reported to the department. All of the subsequent sub-sections are re-lettered. In new sub-section F, the Court is given twenty (20) days instead of ten (10) days to report any felony to the department that included the use of a motor vehicle in the commission of that felony. The final change made to this section is in new sub-section G which now requires the 'willful' failure or refusal of the Court to comply with this section. In the future, the overloaded courts will not be punished with possible removal from office if they cannot comply with this section.

ADMINISTRATIVE IMPLICATIONS

Implementation of this bill will have a moderate to high impact for TRD-ITD. Listed are the affected programs and time estimates:

- MVD Mainframe Batch (180 hrs)
- User Acceptance Testing (60 hrs)
- Total Hours: 240 at \$50 per hour = \$12,000

Due to time and resource constraints, the July 1, 2011 deadline will be difficult to meet. Since the new MVD Milagro Driver System is scheduled to be in production by Fall of 2011

RELATIONSHIP

Relates to Senate Bill 216 “Eliminate Some Drivers’ License Penalties”

TECHNICAL ISSUES

According to TRD:

The following two issues relate to existing statutory language that is carried forward in the bill. The bill presents an opportunity to repair the existing confusing or conflicting language.

- Section 66-5-39 has always contained conflicting language regarding a person’s driving “privilege” and a person’s driver’s “license”. The statute refers to a person’s driving “privilege” being suspended or revoked and that the person knows the driver’s “license” was suspended or revoked. There have been magistrate and municipal courts that use the conflicting language to dismiss tickets because the person’s license was already suspended or revoked. In Section 5, Subsection A (on page 7, line 17) strike the word “license” and replace it with “driving privilege.” A similar change should be made to Section 6, Subsection A (on page 9, line 23).
- The reorganized penalties for driving while a license is suspended contain the confusing, but existing, statutory language specifying that MVD “shall extend the period of suspension for an additional like period” (Section 5, Subsection C (on page 9, lines 10-11)). Some suspensions are for indefinite time periods. For example, when a person does not pay a ticket, their driving privileges are suspended until the ticket is paid, perhaps three years later. The law would be clearer if it simply stated the specific length of the suspension period; a one year period would be consistent with Section 66-5-32.

AMENDMENTS

The Administrative Office of the District Attorneys (AODA) suggests that Section 66-8-135 (B) should be amended to require the reporting within 20 days to the department of defendants who fail to appear.

TRD requests that the effective date of the bill be revised to January 1, 2012, the changes in the bill may be difficult to effectuate by July 1.

DL/mew