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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/12/13

SPONSOR HHGIC LAST UPDATED \_\_\_\_\_ HB 621/HHGICS

SHORT TITLE Report of Certain Motor Vehicle Impairments SB \_\_\_\_\_

ANALYST Boerner

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$0.0	\$0.0			TRD/ MVD Operating Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD), Motor Vehicle Division (MVD)

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Medical Board (MB)

### SUMMARY

#### Synopsis of Bill

House Bill 621 creates a new section of the Motor Vehicle Code requiring the Taxation and Revenue Department (TRD), in consultation with experts, to adopt rules that: (1) designate health care providers who must report persons to the TRD whose cognitive or functional impairments affect their ability to safely drive a motor vehicle; and (2) designate the cognitive and functional impairments that likely would affect someone's ability to safely drive a motor vehicle.

Determinations regarding ability to drive must be based on the "actual effect" a person's medical condition or cognitive or functional impairment has on the person's ability to drive safely and not solely upon the diagnosis of a medical condition or cognitive or functional impairment.

The Department will require reports to determine a person's eligibility for a driver license or permit or whether good cause exists to request the driver to submit to an exam pursuant to 66-5-31 (permitting the Department to order a licensee to submit to an exam if the Department has

good cause to believe that the driver is incompetent or otherwise not qualified to be licensed). The reports are confidential and shall not be used as evidence in any trial arising out of an accident.

Finally, the bill provides that a designated health care provider who in good faith reports, or who fails to report, a person whose cognitive or functional impairment affects that person's ability to safely operate a motor vehicle to the department shall not be liable in any civil action.

## **FISCAL IMPLICATIONS**

None noted.

## **SIGNIFICANT ISSUES**

This bill appears to duplicate some MVD processes currently in statute and practice except for the explicit requirement that a health care provider is required to report to the TRD when a person may have a cognitive or functional impairment that affects a person's ability to drive. Proponents of this bill noted a medical journal article providing opinion regarding physicians' responsibilities in this matter. The article states in part that, "In situations where clear evidence of substantial driving impairment implies a strong threat to patient and public safety, and where the physician's advice to discontinue driving privileges is ignored, it is desirable and ethical to notify the Department of Motor Vehicles."

Currently, Section 66-5-6 of the Motor Vehicle Code provides for a "health standards advisory board" (Board) consisting of five members of the healing arts professions appointed by the TRD with the assistance of the Department of Health (DOH).

The Board is charged with advising the TRD secretary on physical and mental criteria and vision standards relating to the licensing of drivers under the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978].

The Board advises the TRD in the case that the Department has cause to believe that a licensed driver or applicant may not be physically, visually or mentally qualified to be licensed; such information may come from a private individual or medical provider as a "letter of concern."

The Board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the Board or any other qualified person it may designate.

The licensed driver or applicant may provide a written report to the Board by a healing arts practitioner of his choice, and it shall be given due consideration by the Board only after the licensed driver or applicant has again undergone an on-the-road examination and any physical, visual or mental tests as recommended by the Board. These examinations and tests may not be waived by the Department.

Reports received or made by the Health Standards Advisory Board or its members for the purpose of assisting the Department in determining whether a person is qualified to be licensed **are for the confidential use of the Board or the Department and may not be divulged to any person or used as evidence in any trial.**

## PERFORMANCE IMPLICATIONS

The TRD notes that the bill would expand the MVD's current practice in which health providers, family members and others are encouraged to report such conditions, and by which certain conditions are referred to the agency's Medical Review Board for advice on whether or not a driver is capable of safely operating a motor vehicle.

It does not appear that this bill would significantly impact current policy and practice within the TRD although the Department would be required to adopt new rules, such as to designate health care providers who must report persons to the TRD under certain circumstances and designate certain impairments that might affect someone's ability to drive.

## SIGNIFICANT LEGAL ISSUES

The AOC provided the following background information regarding case law related to confidentiality issues: The New Mexico Supreme Court has the authority to adopt evidentiary rules for the courts. See Ammerman v. Hubbard Broadcasting Co., 89 N.M. 307, 312 (1976); Lovelace Medical Center v. Mendez, 111 N.M. 336, 338-39 (1991); Southwest Community Health Services v. Smith, 107 N.M. 196 (1988); Miller & Assoc. v. Rainwater, 102 N.M. 170 (1985). Cf. Albuquerque Rape Crisis Center v. Blackmer, 138 N.M. 398 (2005) (upholding a confidentiality statute that the court construed to be consistent with the Supreme Court's psychotherapist-patient privilege, Rule 11-504 NMRA). Note evidence rule 11-502 "Required reports privileged by statute." The Supreme Court recently has published a proposed revision to this rule. As proposed to be revised, the rule would read, in part: "Should any law require a return or report to be made and the law mandating the creation of that return or report provides for its confidentiality, the person or entity, in either a public or private capacity, making the return or report has a privilege to refuse to disclose or to prevent any other person from disclosing, the return or report." See State Bar Bull. Vol. 52, No. 7, at 21.

## AMDNDMENTS

Regarding the above-mentioned "letter of concern," the Medical Board expressed the value of such a process (so much so that its requirement should be explicitly included in this bill). Standard procedures should include an investigation by the MVD, which may include a request for a formal medical report, including appropriate medical consultation and testing, and possible road and cognitive testing. By this means, an appropriate diagnosis can be made, and the patient can be guided into the appropriate handling both of the impairment and of status of motor vehicle licensure. If the evaluation is positive for significant cognitive or functional impairment, or both, the MVD can then take appropriate action. Since a question could be raised as to the objectivity or bias of the writer of a "letter of concern," it would be best for the person making the report to be identifiable to the MVD, and that the information on identity should be confidential, and not for public release. There should also be appropriate penalties if inappropriate bias in reporting is proven.

The Board recommends the addition to HB621 of a provision for the reporting of an observation of possible cognitive or functional impairment by any concerned witness, that the identity of that witness/reporter be confidential information to be retained in the files of the MVD, that appropriate investigation of the subject of the observation follow a report of observed, possible or probable dysfunction, and that there be specific penalties enumerated for false or malicious reporting.

Another possible amendment could be to convert HB621 into a Memorial for further study of the difficult area of human and medical management.

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

The TRD/MVD will continue to rely on its existing process and policy of voluntary notification from private citizens and medical providers with respect to individuals who have physical, visual or mental impairments that could impact their ability to drive safely.

CEB/svb:blm