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## FISCAL IMPACT REPORT

**SPONSOR**     Hochman-Vigil/     **ORIGINAL DATE**     3/06/19     427/aHJC/aHFI#1/  
                   Alcon/Maestas     **LAST UPDATED**     3/10/19     **HB**     aSJC

**SHORT TITLE**     Motor Vehicle Code Offense Penalties     **SB** \_\_\_\_\_

**ANALYST**     Glenn

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	Indeterminate/See Fiscal Implications	Indeterminate/See Fiscal Implications	Recurring	General Fund
				Current School Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		33.6			Recurring	General Fund
		(Indeterminate)	(Indeterminate)			See Fiscal Implications

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 24, HB 76 and HB 192

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Law Offices of the Public Defender (LOPD)  
 Taxation and Revenue Department (TRD)

#### Responses Not Received From

Administrative Office of the District Attorneys (AODA)

## SUMMARY

### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment removes the \$50 penalty assessment added by the original bill for failure to appear in violation of Section 66-8-126 NMSA 1978, as amended by the bill, makes the failure to appear a penalty assessment misdemeanor. As a result, the bill makes failure to appear a penalty assessment misdemeanor, but no longer includes the corresponding penalty assessment.

### Synopsis of HFI#1 Amendment

The House Floor #1 amendment to House Bill 427 changes the effective date of the bill to October 1, 2019.

### Synopsis of HJC Amendment

The House Judiciary Committee Amendment to House Bill 427 changes the bill's amendments to Section 66-5-39 of the Motor Vehicle Code to provide that the criminal penalties for driving with a suspended license are a fine of not more than \$300, imprisonment of up to 90 days, or both, as provided in Section 66-8-7 NMSA 1978, or no more than ninety days of participation in a certified alternative sentencing program. The amendment also establishes a penalty assessment of \$50 for vehicles that are not registered as required by Section 66-3-1 NMSA 1978.

### Synopsis of Original Bill

House Bill 427 amends Section 66-5-30 of the Motor Vehicle Code to distinguish between driver's license suspensions and "administrative suspensions." The bill provides that the Motor Vehicle Division of TRD may issue an administrative suspension of a driver's license if it is shown that the licensee has failed to fulfill a signed promise or notice to appear in court as required by law or a court, pay a penalty assessment within 30 days of issuance, or comply with the terms of a citation issued by a foreign jurisdiction that is a party to the Nonresident Violator Compact. Under existing law, those offenses are included among those for which MVD may suspend a license. See Sections 66-5-30(A) and 66-5-26 NMSA 1978.

HB 427 amends Section 66-5-39 of the Code, which provides that a person who drives a motor vehicle when the person's privilege to do so is suspended is guilty of a misdemeanor. The bill reduces the applicable criminal penalties by reducing imprisonment from between four and 364 days to not more than 90 days, and reducing the fine from not more than \$1,000 to not more than \$300. The bill deletes Section 66-5-39(C), which extends the period of suspension of driving privileges for up to one year after a conviction of driving with a suspended or revoked license.

HB 427 adds a new Section 66-5-39.2 to the Code, which provides that a person who drives when the person's privilege to do so is "administratively suspended" is guilty of a penalty assessment misdemeanor and may be punished in accordance with Section 66-8-116. The bill amends Section 66-8-116 to provide a \$25 penalty assessment for violations of Section 66-5-39.2.

The bill amends Section 66-8-126 to provide that a violation of a person's written promise to appear in court given to a law enforcement officer upon issuance of a traffic citation is a penalty misdemeanor, and amends Section 66-8-116 to provide a \$50 penalty assessment for violations of Section 66-8-126.

The effective date of HB 427 is July 1, 2019.

### **FISCAL IMPLICATIONS**

According to TRD, implementing the changes proposed by the bill will have a moderate impact on TRD's Information Technology Division. Modifications would include:

- Application and configuration changes to the system.
- Creation of a new job to scan and post penalty assessments for "Failure to appear in court" convictions.
- Creation of New Mail items and letters.

The estimated time to develop, test and implement the changes is approximately 12 weeks, for an estimated soft cost of \$33,600.

AOC notes that the bill would result in minimal administrative cost for statewide update, distribution and documentation of statutory changes.

LOPD states that it would likely see a reduction in its overall operating costs if HB 427 were passed. According to LOPD, driving on a suspended license presently creates a significant number of LOPD cases, and the changes made by the bill would likely result in fewer prosecutions and fewer jury trials.

LOPD notes that criminal prosecutors and district courts likely would see a significant reduction in operating costs, as prosecutions for driving on a suspended license would likely to decrease substantially. Because of the current mandatory four days imprisonment for driving on a suspended license, defendants are more likely to request a jury trial to challenge offenses that result in a suspension. Jury trials are expensive as they require resources of LOPD, courts, law enforcement, and prosecutors. LOPD states the Motor Vehicle Code requires that a person know or "should-have-known" that the person's license was suspended. *See* Section 66-5-39 NMSA 1978. Suspensions based on failing to appear in court or pay a penalty assessment frequently stem from lack of knowledge or faulty memories and can be difficult for the state to prove.

Criminal fines and penalty assessments are paid into the state treasury. *See* N.M. Const. art. XII, § 4 (fines collected under general laws are part of the current school fund); Section 6-8-119 NMSA 1978 (penalty assessments are deposited in the general fund). If HB 427 were enacted, the reduced fines for misdemeanor convictions resulting from driving on a suspended license and the imposition of penalty assessments for driving with an administratively suspended license might result in lower amounts paid into the state treasury.

### **PERFORMANCE IMPLICATIONS**

AOC notes that the courts are participating in performance-based budgeting. According to AOC, HB 427 may have an impact on the measures of the metropolitan and magistrate courts in the

following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

### **ADMINISTRATIVE IMPLICATIONS**

According to AOC, the bill's reduction in penalties for persons found guilty of driving with a suspended license under Section 66-5-39 means that cases brought under that section would no longer automatically qualify for a jury trial. As long as any additional charges did not cause the aggregate potential jail term to exceed 6 months, the court could proceed with a bench trial unless the defendant requests a jury trial. In addition, AOC states that the bill's creation of an administrative suspension with a \$25 penalty assessment might result in more people accepting a penalty assessment during a stop instead of requesting to appear in court.

TRD states that, if HB 427 is enacted, MVD's operating system, Tapestry, will have to be significantly updated to reflect the changes to penalty amounts, citations that trigger suspensions, and the information that is broadcast to law enforcement agencies with respect to what violations require a court summons and what is simply another penalty assessment citation.

TRD states that, considering the estimated 12 weeks required for TRD to implement HB 427 (see Fiscal Implications), the effective date of July 1, 2019 is not feasible. TRD suggests that a more feasible effective date is October 1, 2019.

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

Conflicts with HB 24, Monitoring for School Bus Illegal Passes, HB 76, Yield Right of Way to Transit Buses, and HB 192, Five Feet for Passing Bicycles, which also amend Section 66-8-116 NMSA 1978.

### **TECHNICAL ISSUES**

Section 66-5-26 of the Motor Vehicle Code authorizes MVD to suspend the license of a resident of New Mexico or the privilege of a nonresident to drive a vehicle in the state upon receiving notice of failure to appear or pay a penalty assessment imposed by a tribe or imposed in another state that is a signatory of the Nonresident Violator Compact. AOC notes that Section 66-5-26 is inconsistent with HB 427's provisions authorizing MVD to issue an administrative suspension for failure to appear, pay a penalty assessment or comply with the terms of a citation issued in foreign jurisdiction that is a party to the Nonresident Violator Compact.

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