

LFC Requester:	Ginger Anderson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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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 **Amendment**
Correction **Substitute**

Date January 28, 2024
Bill No: SB 190

Sponsor: Ivey-Soto
Short Title: DWI Act

Agency Name and Code Number: NM Sentencing Commission – 354
Person Writing: Keri Thiel
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	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

BILL SUMMARY

Synopsis:

SB 190 makes a number of changes to the Motor Vehicle Code, Chapter 66, Articles 1 through 8, NMSA 1978. It also creates the DWI Act.

SB 190 first amends the Motor Vehicle Code to encompass the entirety of Chapter 66, NMSA 1978, instead of just Articles 1 through 8. It then amends the definitions section of the Code, Section 66-1-4.3, to redefine “commercial motor vehicle”. The bill also amends Section 66-5-54, the definitions section of the New Mexico Commercial Driver’s License Act, to remove the definition of “commercial motor vehicle” and instead incorporate the definition proposed by the bill in Section 66-1-4.3.

SB 190 also amends Section 66-1-4.11 NMSA 1978 to define “motorboat”.

The bill amends Sections 66-3-1010.3, 66-5-1.1, 66-5-1.2, 66-5-29, 66-5-33.1, 66-5-35, 66-5-54, 66-5-68, and 66-7-2 NMSA 1978 to make conforming changes to statute references and to remove provisions regarding license reinstatement fees. It also amends Sections 66-5-205.1 and 66-5-206 NMSA 1978 to move provisions regarding uninsured motorist insurance policies from Section 66-5-205.1 to Section 66-5-206.

SB 190 enacts a new Article 14 within Section 66 NMSA 1978. The first 22 sections of Article 14 comprise the “DWI Act”, as follows:

- Section 66-14-1: title
- Section 66-14-2: creating and defining the offenses of ‘driving under the influence of intoxicating liquor’ and ‘aggravated driving under the influence of intoxicating liquor’.
- Section 66-14-3: creating and defining the offenses of ‘driving under the influence of intoxicating drugs’ and ‘aggravated driving under the influence of intoxicating drugs’.
- Section 66-14-4: defines “driving a vehicle” for the purposes of Sections 66-14-2 and 66-14-3 NMSA 1978, and provides that “there shall be no claims for damages or relief based upon the exercise of community caretaking” when a motorist is not driving a vehicle as defined in Section 66-14-4.
- Section 66-14-5: provides the penalty for a first conviction of driving under the influence of intoxicating liquor or drugs (same penalty as current law).
- Section 66-14-6: provides the penalty for a second conviction of driving under the

influence of intoxicating liquor or drugs (same penalty as current law).

- Section 66-14-7: provides the penalty for a third conviction of driving under the influence of intoxicating liquor or drugs (same penalty as current law).
- Section 66-14-8: provides the penalty for a fourth conviction of driving under the influence of intoxicating liquor or drugs (same penalty as current law).
- Section 66-14-9: provides the penalty for a fifth conviction of driving under the influence of intoxicating liquor or drugs (same penalty as current law).
- Section 66-14-10: provides the penalty for a sixth conviction of driving under the influence of intoxicating liquor or drugs (same penalty as current law).
- Section 66-14-11: provides the penalty for a seventh conviction of driving under the influence of intoxicating liquor or drugs (same penalty as current law).
- Section 66-14-12: provides the penalty for an eighth or subsequent conviction of driving under the influence of intoxicating liquor or drugs (same penalty as current law).
- Section 66-14-13: recompiles Section 66-8-102 NMSA 1978, concerning driving while intoxicated with a minor in the vehicle, and amends that statute to require the guilty party to attend a parenting class if the minor is the motorist's child, and to create the offense of driving while intoxicated with a teenage minor age 13 to 17 in the vehicle. Driving while intoxicated with a teenager in the vehicle would be a penalty assessment misdemeanor punishable by a fine up to \$300 and requiring the guilty party to attend a parenting class if the teenager is a child of the motorist.
- Section 66-14-14: recompiles Section 66-8-101.1 NMSA 1978, concerning injury to a pregnant person by vehicle, and amends the text of that statute to be gender neutral.
- Section 66-14-15 recompiles Section 66-8-101 NMSA 1978, concerning homicide and great bodily harm by vehicle, and amends the definition of "prior DWI conviction".
- Section 66-14-16: requires all individuals convicted of a DWI offense complete alcohol or drug abuse screening and, if necessary, a treatment program approved by the court. (Same as current Section 66-8-102(L).)
- Section 66-14-17: requires the Corrections Department to provide substance abuse counseling and treatment to all individuals in their custody convicted of a felony DWI offense. (Same as current Section 66-8-102(N).)
- Section 66-14-18: states that convictions in other jurisdictions that would be equivalent to a DWI offense under New Mexico law shall be deemed a conviction for the purpose of determining whether a conviction is a second or subsequent offense. (Substantively same as current Section 66-8-102(S).)
- Section 66-14-19: sets out the circumstances under which a magistrate court has concurrent jurisdiction when a charge is brought under Sections 66-14-2 and 66-14-3 NMSA 1978.
- Section 66-14-20: recompiles Section 66-8-102.1 NMSA 1978, concerning guilty pleas, with non-substantive amendments.
- Section 66-14-21 recompiles Section 66-8-102.2. NMSA 1978, concerning municipal and county ordinances, with non-substantive amendments.
- Section 66-14-22: recompiles Section 66-8-102.4 NMSA 1978, concerning uniform police reports and procedures for DWI arrests, with non-substantive amendments.

SB 190 enacts new Sections 31-38 of Chapter 66, Article 14 NMSA 1978, as the "Boating While Intoxicated Act", which is substantively the same as the provisions in current Sections 66-13-1 through 66-13-6 and Section 66-13-13 NMSA 1978.

SB 190 also enacts new Sections 41-50 of Chapter 66, Article 14 NMSA 1978, to recompile and amend portions of the Implied Consent Act, Sections 66-8-105 through 66-8-112 NMSA 1978

[Section 66-8-106 is not recompiled as it was previously repealed], and add new material, as follows:

- Section 66-14-41: Recompiles the short title, Section 66-8-105, with non-substantive amendments.
- Section 66-14-42: recompiles Section 66-8-107, concerning implied consent to submit to chemical testing, with non-substantive amendments.
- Section 66-14-43: recompiles Section 66-8-108, concerning the consent of a person incapable of refusal, with non-substantive amendments.
- Section 66-14-44: recompiles Section 66-8-109, concerning the administration of chemical tests, with an amendment to remove the list of professions who may perform a chemical test.
- Section 66-14-45: provides that any person authorized by law to draw blood may withdraw blood from another person for a chemical test, prescribes procedures for chemical tests, and provides relief from civil and criminal liability for persons authorized by law to draw blood.
- Section 66-14-46: recompiles and amends Section 66-8-110, concerning the use of tests in criminal or civil actions, to include tests on motorboat operators and to raise the alcohol concentration threshold for the presumption that a person is not under the influence from four one-hundredths to five one-hundredths.
- Section 66-14-47: recompiles Section 66-8-111, concerning refusal to submit to chemical tests, with amendments including motorboat operators and providing the procedure to be followed when a person submits a chemical breath test but thereafter refuses to submit to a chemical blood test.
- Section 66-14-48: provides for video testimony by laboratory technicians.
- Section 66-14-49: recompiles Section 66-8-111.1, concerning written notice of revocation and right to a hearing, with non-substantive amendments.
- Section 66-14-50: replaces Section 66-8-112, which SB 190 repeals, concerning revocation of license to drive. No substantive changes.

SB 190 also enacts new Sections 51-56 of Chapter 66, Article 14 NMSA 1978, to recompile and amend the Ignition Interlock Licensing Act, Sections 66-5-501 through 66-5-504 NMSA 1978, as follows:

- Section 66-14-51: recompiles the short title, Section 66-5-501, with non-substantive amendments.
- Section 66-14-52: recompiles Section 66-5-502, containing definitions, with non-substantive amendments.
- Section 66-14-53: requiring installation of an ignition interlock device upon conviction for a DWI offense. (Text is virtually identical to current Section 66-8-102, subsections O-Q, with only non-substantive amendments.)
- Section 66-14-54: recompiles Section 66-5-503, concerning ignition interlock license requirements, with non-substantive amendments.
- Section 66-14-55: recompiles Section 66-5-504, concerning penalties for violations of the Ignition Interlock Licensing Act, with non-substantive changes.
- Section 66-14-56: recompiles Section 66-8-102.3, concerning the Interlock Device Fund, and incorporates it into the Ignition Interlock Licensing Act, with an added provision that any money remaining in the fund at the end of a fiscal year exceeding twenty percent of the expenditures from the prior fiscal year may be used by the Traffic Safety Bureau for its other statutory duties.

SB 190 also contains three temporary provisions, as follows:

1. requiring that the Department of Transportation coordinate a study on the insurance levels of drivers subject to the Ignition Interlock Licensing Act;
2. requiring the Department of Transportation coordinate a study to identify duplicative forms used in the detection, apprehension, arrest, and prosecution of persons alleged to have driven under the influence of alcohol or drugs; and
3. requiring that Chapter 66, Article 14 NMSA 1978 shall be named “Intoxication and Impairment”.

The bill also repeals Sections 66-8-102, 66-8-103, 66-8-104, and 66-13-1 through 66-13-13 NMSA 1978.

Finally, SB 190 sets an effective date of January 1, 2025.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

SB 190 separates “driving under the influence of intoxicating liquor” and “driving under the influence of intoxicating drugs”, along with their respective aggravated offenses, into two independent statutes. Unlike current law and the proposed law on driving under the influence of intoxicating liquor, the proposed Section 66-14-3 NMSA 1978, regarding driving under the influence of intoxicating drugs, does not include refusal to test as grounds for an aggravated offense.

The DWI penalties, as they exist currently and as they are proposed by SB 190, fall outside of the penalty structure created in Section 31-18-15 NMSA 1978. The New Mexico Sentencing Commission is presently undertaking a review and update to the state’s Criminal Code. As part of this process, the Commission engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the Criminal Code for its strengths and weaknesses. One item of concern for the Robina Institute was that the Criminal Code has a number of special statutes that fall outside of the normal penalty structure in the state. SB 190 would continue the use of special criminal penalties in the Motor Vehicle Code.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Section 38 of the bill and Section 39 of the bill both provide definitions for “aggravated boating while under the influence of intoxicating liquor or drugs”, despite that Section 38 is specific to

liquor and Section 39 is specific to drugs.

Section 45 of the bill strikes Sections “64-8-105 through 64-8-112 NMSA 1953” from the text of the current Section 66-8-105 NMSA 1978. The current statute does not cite the 1953 compilation; instead, it correctly cites Sections 66-8-105 through 66-8-112 NMSA 1978.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS