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FISCAL IMPACT REPORT

SPONSOR Sanchez, M. ORIGINAL DATE 2/3/16
LAST UPDATED _____ HB _____

SHORT TITLE Suspension of Concealed Handgun Licenses SB 200

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(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)

Attorney General's Office (AGO)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 200 proposes to amend Section 29-19-6 NMSA 1978 to remove or add particular language for renewal of handgun licenses. The bill adds a requirement for suspending or revoking a license by DPS. Specifically it adds conviction of a felony, receipt of a conditional discharge, diversion or deferment, plea of guilty or nolo contendere or conviction of a misdemeanor offense involving a crime of violence or is convicted of a misdemeanor DWI, misdemeanor possession or abuse of a controlled substance or misdemeanor assault, battery or battery on a household member.

The provisions of this act apply to a person who holds a concealed handgun license and who was convicted of a misdemeanor or felony offense as provided above, on, before or after July 1, 2016. Otherwise, the effective date of the amendment is July 1, 2016.

FISCAL IMPLICATIONS

No fiscal implications reported.

SIGNIFICANT ISSUES

According to the AGO, SB200 does not conflict with federal law, which requires among other things that any convicted felon lose his or her right to bear arms. In addition, many states have enacted even more restrictive gun laws implicating an individual's right to bear arms. However, the New Mexico Supreme Court has ruled that "upon the satisfactory completion of all conditions for a deferred sentence and the resulting dismissal of all charges, New Mexico restores a person's civil rights...by operation of law without the necessity of a pardon or certificate from the governor." *U.S. v. Reese*, 2014-NMSC-013, 326 P.3d 454. Those civil rights include an individual's 2nd Amendment right to bear arms. The amendments to the concealed handgun license law do not directly prevent an individual from bearing arms, since an individual may still carry a weapon without a concealed handgun license, but they do place certain limitations on that right.

The Rap Back Service, according to the Federal Bureau of Investigations' website, provides authorized entities the ability to receive ongoing status notifications of any criminal history and in limited cases, civil activity reported on individuals holding positions of trust, such as school teachers that occurs after the initial processing and retention of criminal or civil transactions. Law enforcement agencies, probation and parole offices, and other criminal justice entities will also greatly improve their effectiveness by being advised of subsequent criminal activity of persons under investigation or supervision.

ADMINISTRATIVE IMPLICATIONS

According to DPS, SB200 relates to the national criminal history Rap Back program and will not change the current concealed carry weapons licensing procedures. DPS currently sends a letter informing the applicant that the Department has been notified of an arrest. The DPS concealed carry weapons program also requests that licensees notify it of the outcome of the arrest so that it can make a final licensing decision. The proposed change in SB200 will reinforce the department's authority to revoke a concealed carry weapons license when it is informed of a conviction.

TECHNICAL ISSUES

According to the AOC response, the amendment appears to make the possible penalties of license suspension or revocation retroactive to before the July 2016 effective date, which may be over-reaching. However, any of the listed violations would perhaps be covered under giving false information or one of the other existing triggers for suspension or revocation. The amendment also clearly extends the grounds for suspension or revocation to incidents occurring after the license was issued.

The AGO states that there does not appear to be specific instructions within the Act or the amendments that describe the parameters of the suspension or revocation as applicable to the amendments. For example, whether a suspension or revocation applies, under what circumstances, the length of time it would apply, the factors to consider, etc. This may cause inconsistency in the way in which the amendments are enforced.

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The AODA says SB200 would also apply to anyone “convicted of a misdemeanor offense involving the possession or abuse of a controlled substance.” Cf., 18 U.S.C. 922(g)(3) (Possession of a firearm is prohibited to anyone who is an unlawful user of or addicted to any controlled substance.) Since there is no limit on the controlled substance, someone convicted of possessing more than one ounce (but less than eight ounces) of marijuana, or convicted of possession of less than an ounce of marijuana—if it was within a posted drug-free school zone—could have their concealed carry license suspended or revoked. (See, Sect. 31-31-23(B) and Sect. 30-31-23(F), NMSA 1978.) That could also be the sanction for anyone convicted of possessing any amount of any controlled substance listed in Schedule I, II, III or IV or possession of any analog of those substances, except for certain other substances specifically listed in the statute. (See, Sect. 30-31-23(D), NMSA 1978) It’s unclear what is intended by the term, “abuse,” in SB200, and if that also requires some kind of conviction for “abuse” of a controlled substance.

OTHER SUBSTANTIVE ISSUES

The AODA states that the bill duplicates, at least in part, those portions of federal law that make it unlawful for someone convicted of a felony, or convicted of a misdemeanor domestic violence offense, to even possess a firearm. (See, 18 U.S.C. 922(g) (1) [convicted of any crime punishable by a term of more than one year], and 18 U.S.C. 922(g)(9) [convicted in any court of a misdemeanor crime of domestic violence]).

ABS/al/jle