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## FISCAL IMPACT REPORT

**SPONSOR** Maestas Barnes/ Salazar, N      **ORIGINAL DATE** 2/16/2017  
**LAST UPDATED** \_\_\_\_\_ **HB** 325

**SHORT TITLE** Uniform Securities Violation Penalties      **SB** \_\_\_\_\_

**ANALYST** Rogers

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	Minimal, may increase costs	Minimal, may increase costs	Minimal, may increase costs	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)

Office of the Attorney General (OAG)

Aging and Long-Term Services Department (ALTSD)

Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 325 amends the New Mexico Uniform Securities Act to provide increased penalties when the victim is over the age of sixty, raising the crime from a third degree felony to a second degree felony with a minimum term of three years.

### FISCAL IMPLICATIONS

The fiscal impact of this bill has not been quantified, but is believed to be minimal. However, enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. An increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. NMCD's general fund base budget has grown by an average \$9.5 million per year, or 3 percent, since FY14 as a result of growing prison population and inmate's needs.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage, losses in future earnings, and intangible victim costs such as jury awards for pain, suffering, and lost quality of life.

AODA states the fiscal impact on the district attorneys is unknown, but likely to be minimal. Increased penalties (especially with minimum terms) can result in more cases going to trial (with increased costs) or more cases being resolved through plea bargains (and decreased costs).

## **SIGNIFICANT ISSUES**

ALTSD submits the following detailed analysis:

The Adult Protective Services Division (APS) of ALTSD is responsible for protecting vulnerable adults by providing for the detection, correction and elimination of abuse, neglect and financial exploitation through a program of short-term services for adults in need of protective services or protective placement. Financial exploitation, the unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise, is a vastly underreported crime perpetrated against seniors. As such, it a growing concern for APS and the people of New Mexico.

Financial exploitation is a fast-growing form of abuse of seniors, with the number and complexity of reports involving financial abuse of seniors having grown significantly over the past decade. According to the National Adult Protective Services Association (NAPSA), 90% of financial abusers are family members or trusted others, and almost one in ten financial abuse victims will turn to Medicaid due to their own monies or social security checks being stolen from them. In addition, according to NAPSA, the most common ways family members and trusted others exploit seniors is through:

- Using a power of attorney, given by the senior to allow another person to handle his or her finances;
- Taking advantages of joint bank accounts;
- Using ATM cards and stealing checks to withdraw monies from the senior's bank accounts;
- Threatening to abandon or otherwise harm the senior unless he or she gives the abuser money;
- Refusing to obtain needed care and medical services for the senior in order to keep the senior's assets available to the abuser; and
- Stealing the victim's social security checks.

While not all financial exploitation includes "securities" as defined in the bill, any attempt to mitigate financial exploitation may reduce the isolation and dependency of the senior on his or her abuser.

AODA states the bill “increases penalties for securities crimes against victims over sixty. The crimes include fraud and deceit in providing investment advice, and in the offer, sale or purchase of securities. Under current law, such crimes are third degree felonies, which are punishable by up to three years imprisonment and a fine of not more than \$5 thousand. HB325 raises the crime to a second degree felony if the victim is over sixty. A second degree felony is punishable by up to nine years imprisonment and a fine of not more than \$10 thousand. Further HB325 provides that the minimum term of imprisonment is three years.”

RLD explains “in response to a growing national trend where the elderly are being targeted for financial crimes, new laws are being enacted to better protect our aging community. HB 325 proposes to strengthen the New Mexico laws that protect elders, especially those who may be potential victims of financial abuse, by creating an enhanced criminal penalty for a person who willfully engages in an act, practice or course of business that operates as fraud or deceit upon a person ages 60 or older. The current elements required to establish a financial fraud case will not change; however, if a victim is 60 years of age or older, the offender may be subject to a second degree felony, up to nine years, instead of the current third degree felony, up to three years. Because it is a higher-class felony, an offender would be subject to fine of up to \$10 thousand dollars instead of the current \$5 thousand dollar fine for each violation.”

### **TECHNICAL ISSUES**

AODA suggests “as currently written, Subsection A (describing violations of Sections 501 and 502 of the securities law) and Subsection B (describing violations of Section 505 – misleading filings- of the securities law) both end with the statement “For purposes of Subsection B of Section 31-18-13 NMSA 1978, the minimum term prescribed by this subsection is three years.” HB325 adds a new Subsection B, renaming the current Subsection B as Subsection C. The new Subsection B also ends with the statement, “For purposes of Subsection B of Section 31-18-12 NMSA 1978, the minimum term prescribed by this subsection is three years.” If HB325 intends to keep the original intent of the statute to impose a minimum term of three years on violation of Section 505 (as described in the original Subsection B, now Subsection C), the language in that subsection should be changed to state that “For purposes of Subsection C of Section 31-18-12 NMSA 1978, the minimum term prescribed by this subsection is three years.” If the intent of HB325 is to remove the three year minimum from that provision, that should be made clear in the title of the bill.”

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

RLD explains:

New Mexico, like the rest of the country, is experiencing growth of its senior population. With those growing numbers, financial abuse of the elderly has also been rising. Reports and statistics show that persons over 50 years of age control a great percentage of household net worth. This makes them prime targets for exploiters, especially if they are homebound or disabled in some way.

About 15 percent of the U.S. populations are people aged 60 or older. However, 30 percent of all frauds are committed against this age group and over 45 percent of investment fraud has a senior as its victim. If the laws remain as they are, the perpetrators of these crimes will not face any additional punishment. By creating harsher penalties for crimes perpetrated

against people over 60, we would be acknowledging the dangers facing elders and sending a message to potential wrongdoers that their actions will not be taken lightly. Steps are being taken to educate elders and other professionals in our communities regarding the red flags financial exploitation, but more must be done.

TR/sb/al