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FISCAL IMPACT REPORT

SPONSOR Garcia, MP **ORIGINAL DATE** 1/23/2019
LAST UPDATED _____ **HB** 40
SHORT TITLE Background Checks at Gun Shows **SB** _____
ANALYST Edwards

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 8, House Bill 8.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Responses Not Received From

Administrative Office of the Courts (AOC)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 40 is an act relating to firearm transfers at gun shows. The bill creates the “Gun Show Firearm Transfer Act.”

Section 3 provides that a federal firearms licensee or the holder of a current and valid concealed handgun license recognized by the department of public safety, does not need a background check. In all other situations, a vendor at a gun show must conduct a federal firearm transfer background check when transferring or attempting to transfer a firearm. The promotor or organizer of the gun show is responsible for displaying the requirement of a background check and arranging for a federal firearms licensee or licensees to be on premises to run the background checks at a fee not to exceed \$25 per transfer.

The bill references a federal statute for the definition of “federal firearms licensee, which provides that “...dealer means (A) any person engaged in the business of selling firearms at

wholesale or retail, (B) any person engaged in the business of repairing firearms or making or fitting special barrels, stocks or trigger mechanisms, or (C) any person who is a pawnbroker.” [See, 18 U.S.C. 921(a)(11)]

Section 4 provides exceptions for background checks when the firearm is an antique or relic.

Section 5 allows for immunity from civil liability for the transferor or the federal firearms licensee unless they know or reasonably should know that the transferee is likely to commit an unlawful act with the firearm or the transferee is going to deliver the firearm to a prohibited third party.

Section 6 defines the crime of unlawfully transferring a firearm at a gun show as well as provides for the criminal penalty, a misdemeanor.

Section 7 defines the crime of failing to arrange for a federal firearms licensee at a gun show or provide notice and provides for the penalty, a petty misdemeanor.

Section 8 states that nothing in the act shall authorize the government to maintain a list or registry of firearm transfers or firearm owners. It also states that if there are any records that are kept because of the act, those records are not subject to the Inspection of Public Records Act.

Section 9 repeals the act in the event that federal law requires background checks on all transfers of firearms that are not prohibited or federal law preempts the State from enforcing state law.

FISCAL IMPLICATIONS

DPS has not yet submitted an analysis of this bill making fiscal analysis difficult at this time. However, because the bill does not appear to mandate additional work by DPS other than continuing to issue concealed handgun licenses, it appears the fiscal impact of this bill is minimal.

SIGNIFICANT ISSUES

According to [Governing](#), most states do not require background checks to purchase a firearm at gun shows from private individuals; federal law only requires licensed dealers to perform checks. Governing also explains “under the Gun Control Act of 1968, federal law clearly defined private sellers as anyone who sold no more than four firearms per year. But the 1986 Firearm Owners Protection Act lifted that restriction and loosely defined private sellers as people who do not rely on gun sales as the principal way of obtaining their livelihood.”

Governing also explains:

Some states have opted to go further than federal law by requiring background checks at gun shows for any gun transaction, federal license or not. The majority of these such states require background checks at the point of transfer for all firearms. Alternatively, Hawaii, Illinois, Iowa, Massachusetts, Michigan, Nebraska, New Jersey and North Carolina regulate purchases by prohibiting private dealers from selling to individuals who do not have licenses/permits, which they obtain following background checks.

Some states' requirements are limited only to handgun purchases. Even in states that do not require background checks of private vendors, the venue hosting the event may require it as a matter of policy. In other cases, private vendors may opt to have a third-party licensed dealer run a background check even though it may not be required by law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to Senate Bill 8, House Bill 8.

OTHER SUBSTANTIVE ISSUES

NMAG points out “in Section 3, subsection C, the qualifying language of ‘as reflected on promotional material or advertising for the gun show’ might allow for loopholes. The language as it is currently drafted might be interpreted to not require an organization or multiple organizations or multiple people to comply with subsection C(1) and subsection C(2).”

TE/sec/gb