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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/19
 LAST UPDATED 3/04/19

SPONSOR Martinez, R.C./Wirth HB 8/aSJC/aSF1#1/aSF1#2/
 SHORT TITLE Firearm Sale Background Check SB aHCPAC

ANALYST Edwards

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 8
 Relates to House Bills 35, 40, 201

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Administrative Office of the Courts (AOC)

Responses Not Received From

Department of Public Safety (DPS)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee Amendment to Senate Bill 8 strikes a redundant occurrence of the word “sale” from the bill.

Synopsis of Senate Floor Amendment #2

Senate Floor Amendment #2 to Senate Bill 8 requires a federal instant background check when the buyer is not a natural person or the seller does not have a federal firearms license. It also allows a federal firearms licensee to charge up to \$35 for a background check.

Synopsis of Senate Floor Amendment #1

Senate Floor Amendment #1 to Senate Bill 8 adds definitions for “consideration” and “immediate family member.” The amendment also adds to the definitions an exclusion for an

“antique firearm as defined in 18 U.S.C. Section 921(16), a powder-actuated tool or other device designed to be used for construction purposes, an emergency flare or a firearm in permanently inoperable condition.”

The amendment also adds an exclusion to the provisions of Subsection A for immediate family members.

Synopsis of SJC Amendment

The Senate Judiciary Committee (SJC) amendment to Senate Bill 8 strikes the language “where the sale is made for a fee or other consideration” on page 1, line 21 and 22.

On page 2, line 4, after "officers", the SJC amendment inserts "authorized to carry a firearm and".

On page 2, line 5, before "the", the SJC amendment inserts "federal law or".

Lastly, on page 2, lines 5 and 6, the SJC amendment strikes “and authorized to carry a firearm”.

Synopsis of Original Bill

Senate Bill 8 creates a new section of Chapter 30, Article 7 NMSA 1978 making it unlawful to sell a firearm without a background check. Senate Bill 8 prohibits the sale of a firearm without conducting a federal instant background check if the sale is made for a fee or other consideration. The bill excludes the sale of a firearm by a person who holds a valid federal firearms license; to a law enforcement agency; or between two law enforcement officers authorized to carry a firearm.

A federal instant background check is defined as meeting the requirements of 18 U.S.C. Section 922(t) and that does not violate 18 U.S.C section 922(g) or 18 U.S.C. Section 922(n) or state law. This bill proposes an exception for law enforcement, or for sales made “by or to” current holders of valid federal firearms licenses, issued pursuant to 18 U.S.C. Section 923 (a). A background check under Senate Bill 8 is one that is conducted by a federal firearms licensee (FFL) and is submitted to the national instant criminal background check system (NICS) to determine whether an individual is prohibited from purchasing a firearm.

The bill makes a violation of the provisions of this section a misdemeanor. Each party who violates this new section of Chapter 30 may each be charged separately for the unlawful sale of the firearm. Each firearm sold that violates this new section constitutes a separate offense but two or more offenses may be charged together.

FISCAL IMPLICATIONS

None of the amendments to Senate Bill 8 are assumed to have a fiscal impact on state agencies.

There will be minimal administrative cost to AOC for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The AOC explains:

Although this legislation requires a background check for most transactions, it exempts the sale between two law enforcement officers. According to [the Bureau of Alcohol, Tobacco, Firearms and Explosives \(ATF\) website](#), a background check is required for a law enforcement officer if the firearm purchased is for their own personal use.

Senate Bill 8 makes no exception for antique firearms that are not functional. The definition of an antique firearm under 26 U.S.C Section 5845(g) is: “The term “antique firearm” means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.”

ADMINISTRATIVE IMPLICATIONS

The Attorney General believes the bill as drafted could expand the scope of criminal violations that the Attorney General has prosecutorial jurisdiction over.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 8 duplicates House Bill 8 - Firearm Sale Background Check.

Senate Bill 8 is related to:

House Bill 35 – Firearm Licensee Stolen Gun Checks

House Bill 40 – Background Checks at Gun Shows

House Bill 201 – Firearm Transfer Act

AOC points out Senate Bill 8 conflicts with Senate Bill 201 which exempts “antique or relic firearms” from requiring a background check. Senate Bill 201 appears to have the same primary focus of requiring a background for private gun sales. The term “relic firearm” is not consistent with federal definitions.

TECHNICAL ISSUES

The Attorney General explains “Senate Bill 8 provides that it is unlawful to sell a firearm without a background check when ‘the sale is made for a fee or other consideration.’ The term ‘other consideration’ is not defined, and may be subject to interpretation as to whether a sale, as subject to the bill, occurred.”

AOC suggests the following:

In Section 1 of Senate Bill 8, subsection B(3), remove “between two law enforcement officers certified pursuant to the Law Enforcement Training Act and authorized to carry a firearm” since no such federal exemption exists. Subsection B (2) could be amended to read, “to a law enforcement agency or law enforcement officer, if the firearm is for official and not personal use” to comply with federal ATF regulations.

In Section of 1 Senate Bill 8, in subsection B, add a section 3 that reads, “antique firearm”. Also add the federal definition of antique firearm to subsection C(4).

TE/al/gb/al