

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 255 amends Section 30-7-7.1 NMSA 1978 by creating a new violation of this statute for facilitating firearm sales without a background check on publicly available platforms. SB 255 also increases the penalty for a violation under Section 30-7-7.1 from a misdemeanor offense to a third degree penalty.

SB 255 also amends Section 30-42-3 NMSA 1978 by including the unlawful sale of a firearm without a background check and facilitation of the unlawful sale of a firearm without a background check, pursuant to Section 30-7-7.1 NMSA 1978, as new crimes under the Racketeering Act.

Senate Bill 255 does not contain an effective date and would be effective on June 20, 2025, 90 days following adjournment of the Legislature, if signed into law.

FISCAL IMPLICATIONS

As penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury costs. These additional costs are not capable of quantification.

There will be a minimal administrative cost for the 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

Section 30-7-7.1 was enacted in 2019 and requires background checks for all private firearm sales, with limited exceptions. A violation under this statute is currently a misdemeanor offense with each firearm sold contrary to the provisions of this section constituting a separate offense. (Section 30-7-7.1(E)) SB 255 increases the penalty to a third degree felony, punishable by up to three years in prison for each offense.

SB 255 focuses on addressing firearm sales without a background check on publicly available platforms. A publicly available platform is a computer application or service that provides digital content and services to the public. This legislation appears to focus on firearm sales on social media sites or on online classified ads since it references “reasonable, industry standard steps could be taken to block or limit the unlawful sale of a firearm.” Since a violation of Section 30-7-7.1 is a criminal offense, it is not clear how a company or organization, rather than an individual can be held criminal liable.

According Everytown (2021), “Unchecked: An Investigation of the Online Firearm

Marketplace”:

“For more than a decade, the online firearm marketplace has emerged as a growing market for anonymous gun purchases through websites such as Armslist, the self-proclaimed “largest free gun classifieds on the web.” Everytown has worked to understand the scope and threat of this type of commerce. This report lays out the results of Everytown’s analysis of Armslist ads between 2018 and 2020, and the findings of our prior investigations examining the criminal backgrounds of buyers, how transactions are carried out, and whether unlicensed sellers would require a background check on a private gun sale.” <https://everytownresearch.org/report/unchecked-an-investigation-of-the-online-firearm-marketplace/>

In 2018, Everytown’s investigators placed ads on Armslist in four states that did not require background checks on these unlicensed sales—Georgia, Florida, Ohio, and Tennessee. On average, nearly 1 in 9 of these prospective buyers could not legally possess a firearm. In states that required background checks on all gun sales, on average, 84 percent of sellers stated that the buyer would need to pass a background check before the gun was transferred. This article also contains New Mexico data from 2017, which indicated that 1 in 15 prospective gun purchasers on Armslist could not legally own a firearm. In 2017, New Mexico did not require background checks for all firearm purchases.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS - none identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP - none identified.

TECHNICAL ISSUES – none.

OTHER SUBSTANTIVE ISSUES - none identified.

ALTERNATIVES - none.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL – none.

AMENDMENTS – none.