

<b>LFC Requester:</b>	Felix Chavez
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/10/2025 *Check all that apply:*  
**Bill Number:** SB 318 Original  Correction   
 Amendment  Substitute

**Sponsor:** Joseph Cervantes **Agency Name and Code** Regulation and Licensing Dept. - 420  
**Short Title:** Firearms in Unfair Practices Act **Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
n/a	n/a	n/a	n/a

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
n/a	n/a	n/a	n/a	n/a

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	n/a	n/a	n/a	n/a		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: n/a

Duplicates/Relates to Appropriation in the General Appropriation Act n/a

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

SB 318 amends NMSA 1978, Section 53-17-2 by specifically providing that a foreign corporation receiving a certificate of authority pursuant to that section consents to general personal jurisdiction in New Mexico (pp. 1-2).

SB 318 extensively revises NMSA 1978, Sections 58-12-1 et seq., the Unfair Trade Practices Act (the “Act”). Specific amendments to the Act of significance include the following:

SB 318 adds key terms and definitions to the act including “destructive device,” “firearm,” “firearm accessory,” “firearm part,” “online marketplace,” “seller,” and “third-party seller” (pp. 2-5).

SB 318 revises the definitions of existing terms in the Act (pp. 4-10). Significant definitional amendments clarify when specific jurisdiction is created through trade or commerce (pp. 5-6) and adds conduct that qualifies as “unfair or deceptive trade practice” (pp. 6-10). SB 318 adds representing goods or services not legal to purchase in New Mexico as legal to purchase; representing goods or services meet the warranties of merchantability or fitness for a particular purpose; and knowingly manufacturing, advertising, distributing or offering for sale a firearm, destructive device, firearm part or firearm accessory contrary to New Mexico or federal law as unfair or deceptive trade practices (pp. 7-10). SB 318 adds goods or services offered for sale by an online marketplace whether directly or by a third-part seller and adds extending credit or collecting debts in violation of state or federal law to the definition of “unconscionable trade practice” (p. 10).

SB 318 adds to the current exemption to the Act to include actions or transactions expressly permitted by New Mexico or Federal law, when immunity exists under New Mexico or Federal law or regulations; and in certain actions having insufficient allegations or proof (p. 13).

SB 318 adds the provision that a person accepting restitution may subsequently maintain a cause of action if restitution is not paid as agreed (p. 15).

SB 318 increases the monetary amount of a private remedy that may be recovered pursuant to the Act (p. 16).

SB 318 provides standing for “[a] person aware of an unfair, deceptive or unconscionable trade practice” to seek injunctive relief and monetary damages (pp. 16-17).

SB 318 clarifies that attorney’s fees may be awarded against a complaining party if “the party knew it was groundless at the time it was initiated” (p. 17).

SB 318 removes mediation procedures (pp. 18-19).

SB 318 creates joint and several liability between parties acting in concert to manufacture,

advertise, distribute or offer for sale a firearm, destructive device, or firearm part or accessory in violation of New Mexico or Federal law (p. 19).

SB 318 creates joint and several liability to online marketplaces that offer for sale or allows third-party sellers to and third-party sellers to offer for sale a firearm, destructive device, firearm part or firearm accessory when the manufacture, advertising, distribution or sale would violate New Mexico or Federal law (p. 19). Assumedly the joint and several liability created here is between the online marketplaces and third-party sellers, but the specific parties jointly liable is not stated in the subsection (p. 19, lines 14-20).

SB 318 requires online marketplaces comply with subpoenas seeking information about third-party sellers in related actions brought pursuant to the Act and provides remedies for failure to comply (pp. 19-20).

SB 318 specifies when certain jurisdictional requirements will be established by online marketplaces, sellers or third-party sellers (p. 20).

SB 318 increases the civil penalty available for violation of the Act (p. 21).

SB 318 modifies some of the procedure for production of documentary materials pursuant to a demand by the attorney general (pp. 22-24).

## **FISCAL IMPLICATIONS**

No known fiscal implications on the Regulation and Licensing Department (RLD).

## **SIGNIFICANT ISSUES:**

SB 318 amends the Business Corporation Act by imposing a requirement of a consent to registration. SB 318 expands personal jurisdiction of a foreign corporation that received a certificate of authority under the Business Corporation Act, requiring that under SB 318, all corporations “consent to personal jurisdiction” and corporations doing business in New Mexico “enjoy the same, but no greater rights and privileges as a domestic corporation... and is subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.” pp. 1-2. This amendment to the Business Corporation Act may make it easier to establish personal jurisdiction over corporations. This consent to registration places foreign corporations on equal footing with domestically organized and registered corporations in New Mexico, allowing and expanding personal jurisdiction and authority to commence suit against corporations that prior to this change in law might have successfully argued they did not manifest contact with New Mexico sufficient for liability. Under SB 318’s amendment to the Business Corporation Act, there would not be any need for plaintiffs in New Mexico to establish minimum contacts against a corporation, including establishing the quantity of contacts necessary to establish personal jurisdiction.

## **PERFORMANCE IMPLICATIONS:**

## **ADMINISTRATIVE IMPLICATIONS:**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES:**

### **ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:** Due process including the establishment of the traditional bases for exercising judicial power over a non-resident corporation including an independent inquiry into the defendant corporations' contacts with New Mexico will remain.

### **AMENDMENTS**