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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/25/25

SPONSOR Cervantes

BILL
NUMBER Senate Bill 318

SHORT TITLE Firearms in Unfair Practices Act

ANALYST Chavez

REVENUE* (dollars in thousands)

| Type | FY25 | FY26 | FY27 | FY28 | FY29 | Recurring or Nonrecurring | Fund Affected |
|-----------------------|------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|---------------------------|---------------|
| Fines and Forfeitures | No fiscal impact | Indeterminate but minimal gain | Indeterminate but minimal gain | Indeterminate but minimal gain | Indeterminate but minimal gain | Recurring | General Fund |

Parentheses () indicate revenue decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| Agency/Program | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------|-------------------------|----------------------------------|----------------------------------|----------------------------------|---------------------------|---------------------|
| NMAG | No fiscal impact | Indeterminate but minimal | Indeterminate but minimal | Indeterminate but minimal | Recurring | General Fund |
| Courts | No fiscal impact | Indeterminate but minimal | Indeterminate but minimal | Indeterminate but minimal | Recurring | General Fund |

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Conflicts with House Bills 61, 62, 224, and 245.

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 Regulation and Licensing Department (RLD)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From
 New Mexico Attorney General (NMAG)
 Tax and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Bill 318

Senate Bill 318 (SB318) seeks to amend various sections of New Mexico law to regulate

firearms and destructive devices under the Unfair Practices Act (UPA).

SB318 amends Section 53-17-2 NMSA 1978, governing powers of a foreign corporation, to provide that a foreign corporation that has received a certificate of authority under the Business Corporation Act consents to general personal jurisdiction in New Mexico.

The bill amends Section 57-12-2 NMSA 1978 to include firearms and destructive devices within the definition of goods and services covered by UPA, thereby subjecting their manufacture, advertising, distribution, and sale to consumer protection laws. The bill also amends to the definition of "unfair or deceptive trade practice" to include representing goods and services as legal to purchase when they are not, exempting representations or activities authorized under the Lynn and Erin Compassionate Use Act or the Cannabis Regulation Act. SB318 also defines terms including online marketplaces, third-party sellers, and other factors related to online exchanges.

SB318 amends Section 57-12-7 NMSA 1978, the statute governing exceptions to UPA, to now exclude actions or transactions explicitly permitted by federal or state law or by a regulatory body, instead of exempting just what was expressly permitted by a regulatory body. It also exempts cases where a person, business, or entity has legal immunity under U.S. or New Mexico law. Additionally, UPA would not apply when specific legal requirements, such as proving proximate cause of harm or demonstrating that the alleged unfair practice took place within New Mexico, are not met.

Section 57-12-9 NMSA 1978 would also be amended to bar recovering any damages in an action if the individual accepts restitution from an assurance to now allowing them to bring forth an action if the defendant fails to make restitution as agreed.

The bill amends Section 57-12-10 NMSA 1978, the private remedies statute. The proposed amendment would increase the amount recoverable in an action under UPA from actual damages or \$100, whichever is greater, to actual damages or \$10 thousand, whichever is greater. It also increases the amount recoverable where the trier of fact (a person or group of people who determines disputed issues of fact in a legal proceedings) finds that the party has willfully engaged in a unlawful trade practice, from an award of up to three times actual damages or \$300, whichever is greater, to an award of up to three times actual damages or \$10 thousand , whichever is greater. SB318 would allow courts to grant an injunction against a person engaged in an unfair, deceptive, or unconscionable trade practice involving firearms, destructive devices, firearm parts, or accessories that violate New Mexico or federal law. The person granted the injunction would also be awarded \$250 thousand per violation. SB318 also strikes two sections related to mediation use to resolve disputes under UPA.

SB318 also amends Section 57-12-10 NMSA 1978 to have multiple parties, who work together in the manufacture, advertise, distribute or offer for sale a firearm, destructive device, firearm part or firearm accessory, incur joint and several liability. Online marketplaces would also be jointly and severally liable for any violations of UPA that occur on the online marketplace. Online marketplaces would also be required to comply with validly issued subpoenas that seek information about a third-party seller. If an online marketplace or third-party seller willfully fails to or refuses to comply with the subpoena, that itself will be considered a violation of UPA and would be liable to award the requesting party \$250 thousand and attorney fees and costs if the violation revolves around a third-party seller dealing with a firearm, destructive device, firearm

part or firearm accessory. If the subpoena is issued involving any other allegation under UPA, the online marketplace or third-party seller would be liable for a \$10 thousand award to the requesting party. The bills finally amend this section to have an online marketplace, seller, or third-party seller without a U.S. business location, or one that hides its location while selling in New Mexico, is considered to have minimum contacts with the state, benefit from its laws, conduct business there, and be subject to legal action in its courts.

SB318 also amends Section 57-12-11 NMSA 1978 to increase civil penalties for violations, raising the fine to \$25 thousand (from \$5,000) and \$250 thousand per violation if the infraction involves firearms.

Further, the bill strengthens enforcement mechanisms by granting the New Mexico Attorney General (NMAG) broader authority under Section 57-12-12 NMSA 1978 to investigate and prosecute such violations by being able to issue civil investigative demands (CID). The bill does provide provisions that NMAG will not publish the findings from CIDs unless ordered by the court. SB318 also provides that documentary material produced pursuant to a CID, unless ordered by the court, is subject to the Inspection of Public Records Act and discoverable by any party to an action brought pursuant to UPA.

The bill amends Section 57-12-16 to clarify that UPA does not apply to media, unless the publication, broadcast or reproduction violates the laws of New Mexico or the U.S.

Finally, the bill seeks to create a new section, Section 57-12-3.2 NMSA 1978, making it unlawful to engage in unfair or deceptive trade practices related to firearms and destructive devices, specifically prohibiting violations of Section 30-7-7 NMSA 1978 (governing the unlawful sale, possession or transportation of explosives) and other state or federal laws governing firearm commerce.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Revenue. SB318 provides for a civil penalty that may be imposed in an action brought by NMAG under UPA for knowingly engaging in an illegal firearm trade practice of up to \$250 thousand per violation. Because this is a new, relatively narrow category of unfair practice, it is difficult to predict how many cases will result in the imposition of such a penalty, or the amount of any penalty imposed in a case. As a result, LFC staff estimates the fiscal impact on revenues to be indeterminate but have minimal gain.

Operating Budget Impact. Under existing law, NMAG is authorized to bring an action in the name of the state alleging a violation of UPA. SB318 expands the scope of coverage of UPA, but would include a new and relatively narrow category of unfair practice, meaning that the operating budget impact on the courts and NMAG would be indeterminate but minimal.

SIGNIFICANT ISSUES

SB318 is a duplicate of the House Judiciary Committee's amendments to Senate Bill 428

(SB428) that was sponsored by the Senate Judiciary Committee from the 2023 legislative session. The New Mexico Attorney General (NMAG) then objected to the provisions of Section 9, which makes documents produced in response to a CID public record, absent a court ruling otherwise, which reverses the presumption in the current version of UPA that these documents are not public records. Section 9 of SB318, the corresponding section, remains unchanged from SB428 of the 2023 session. Because of this, NMAG’s objection would remain. In previous analysis, NMAG explained the basis for the current law providing for nondisclosure of CID materials as a general rule:

The Office of the Attorney General uses CIDs as a tool to investigate potential violations of UPA before filing a lawsuit. By making information obtained through a CID subject to public disclosure under IPRA, the bill would significantly impact the Attorney General’s ability to carry out its enforcement authority under UPA for at least three reasons.

First, CIDs often seek highly sensitive information, including HIPAA protected health information, private banking information including detailed transaction logs, and confidential trade secrets. Targets of CIDs commonly object to providing full responses on the basis that such material is too sensitive to turn over. The default confidentiality and IPRA exception in the current CID provisions of UPA provide a way for the Attorney General to overcome those objections and compel production of such materials because they will not be subject to public disclosure. If CID materials become subject to public disclosure through IPRA by default, the office will face extensive litigation over confidentiality over the majority of CIDs issued by the office.

Second, at times, the Attorney General issues CIDs to third party entities to obtain information about a potential defendant’s UPA violation. When this happens, the fact that a third-party CID has been issued, and the information obtained, is not disclosed to any party unless and until the Attorney General files a lawsuit against the defendant. If documents obtained through a CID become subject to disclosure under IPRA by default, a potential defendant which has some reason to suspect that it is under investigation by the Attorney General may be able to submit its own IPRA request to obtain and review information obtained by the Attorney General from third parties before a lawsuit is filed. Generally, parties to litigation are not entitled to obtain materials created by an opposing party in anticipation of litigation, particularly when those materials may reveal the “mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.” NMRA Rule 1-026(B)(5). The presuit disclosure of CID evidence sought and obtained by the Attorney General related to a potential UPA lawsuit would likely reveal much about the opinions or legal theories of the office leading up to the filing of the lawsuit and be a significant disadvantage to the office in pursuing its enforcement authority under UPA through litigation.

Finally, the Attorney General commonly participates in multi-state enforcement efforts with other Attorneys General to investigate a specific potential defendant or group of defendants whose conduct may have violated consumer protection laws in multiple states. These multi-state groups commonly involve entering into a Common Interest Agreement to allow the participating Attorneys General to communicate and share investigative materials without waiving attorney/client privilege or attorney work product privilege. If CIDs issued under the New Mexico UPA are subject to disclosure under IPRA, New Mexico may not be able to participate fully in such multi-state enforcement efforts in the future because of the confidentiality requirements included in group Common Interest

Agreements.

The Administrative Office of the Courts (AOC) points out that the Connecticut Supreme Court, in a 4-3 decision in *Soto v. Bushmaster Firearms Int'l, LLC* (2019), allowed a lawsuit against the manufacturer of the AR-15-style rifle used in the 2012 Sandy Hook massacre to proceed, despite federal protections under the Protection of Lawful Commerce in Arms Act (PLCAA). The plaintiffs, representing victims' estates, argued that Bushmaster's marketing violated the Connecticut Unfair Trade Practices Act (CUTPA) by promoting the rifle's militaristic and combat capabilities, potentially encouraging criminal use. The Court ruled that this marketing strategy fell within PLCAA's "predicate exception," which permits lawsuits based on violations of applicable state laws.

The ruling marked a significant limitation on PLCAA's broad immunity for gun manufacturers. In November 2019, the U.S. Supreme Court declined to review the case, upholding the Connecticut Supreme Court's decision and allowing the lawsuit to move forward.

The Regulation and Licensing Department (RLD) provides the following on the proposed amendments to the Business Corporation Act:

SB318 amends the Business Corporation Act by imposing a requirement of a consent to registration. SB318 expands personal jurisdiction of a foreign corporation that received a certificate of authority under the Business Corporation Act, requiring that under SB318, 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 SB318'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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB318 conflicts with House Bills 61, 224, and 245 because these bills also amend Section 57-12-2 NMSA 1978, part of UPA. SB318 conflicts with HB62 because it repeals Section 57-12-12 NMSA 1978, another section of UPA.

TECHNICAL ISSUES

Section 1 amends a section in the Business Corporation Act which does not appear to be reflected in the title of SB318.

Page 21, lines 14-19: this description of an illegal firearm trade practice does not encompass all the activities contained in the definition of this UPA violation at Section 1(J)(21) on page 9, lines

21-24.

Page 4, line 24: NMAG noted for the past duplicate bill that adding “or internet” to the definition of “seller-initiated telephone sale” may have no effect on the scope or application of UPA, since as a result of a substantial rewrite of this Act in 2003, this term does not appear anywhere else in UPA. Further, most of the prohibitions in Section 57-12-22 are specific to telephone-based sales solicitations and are not applicable to email or website-based solicitations.

FC/hj/SL2