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## FISCAL IMPACT REPORT

SPONSOR Rue ORIGINAL DATE 2/25/15  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Uniform Securities Act False Statements SB 541

ANALYST Elkins

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Indeterminate	Indeterminate		

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 541 amends the Uniform Securities Act by making it unlawful for any person to intentionally make any materially false, fictitious, or fraudulent statement or representation to law enforcement officers of the Securities Division.

### FISCAL IMPLICATIONS

The Securities Division of RLD, as well as the entire state, may have an opportunity to collect fines from violators of the Securities Act. Depending on the facts and circumstances of each case, a fine could be imposed or suspended. If a fine is imposed, it would go into the same fund as any other criminal fine.

### SIGNIFICANT ISSUES

RLD offers the following commentary:

Making false statements is a federal crime under 18 U.S.C. 1001. Federal law prohibits

knowingly and willfully making false or fraudulent statements, or concealing information, in “any matter within the jurisdiction” of the federal government. Prosecutors have successfully used this statute to reach cover-up crimes such as perjury, false declarations, and obstruction of justice and government fraud cases. With this bill, New Mexico prosecutors will be able to use the adopted state version to effectively prosecute similar Securities related crimes. Additionally, this statute will act as a deterrent for witnesses who might be considering misleading law enforcement for their own personal gain.

The Securities Division routinely uses proffer agreements to obtain information from witnesses, subjects, and targets. Such statements are unsworn and not subject to perjury, yet such statements cannot be used directly against the person to prove he or she did something wrong. Under current law, if the cooperating witness lies during the proffer meeting, the division cannot punish that person criminally. Proffer agreements would have more credibility if the division could prosecute the person for lying to the division agents who are taking the statement.

Because the new criminal provision is directed only at material misstatements to law enforcement, it is important that the agent properly identify themselves as law enforcement officers; thus, undercover operations would not be subject to this violation. Moreover, a person or his lawyer that makes a material misrepresentation in a court proceeding or in a filing to the division would not be subject to this violation.

## **TECHNICAL ISSUES**

According to AGO, under Section 58-13C-501 NMSA 1978, it is already unlawful for a person “in connection with the offer, sale or purchase of a security, directly or indirectly,” to, among other conduct, “make an untrue statement of a material fact or to omit to state” a necessary material fact. Although SB 541 could apply to false statements that are made to the Securities Division but that are not “in connection with the offer, sale or purchase of a security, directly or indirectly,” it is unclear why the bill has been introduced as a freestanding section rather than as an amendment to Section 58-13C-501 NMSA 1978. Possible overlap/duplication of that statutory section with SB 541 should be explored further.

CE/je/bb