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FISCAL IMPACT REPORT

SPONSOR Martinez/Wirth ORIGINAL DATE 1/18/2017
LAST UPDATED _____ HB _____
SHORT TITLE Background Checks on Gun Transfers SB 48
ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 50.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

SB 48 would create a new section of Chapter 30, Article 7 NMSA requiring an unlicensed person to use a firearm dealer when transferring a firearm to another unlicensed person. A person who violates the provisions of the bill would be guilty of a misdemeanor for a first offense and guilty of a fourth degree felony for a second or subsequent offense.

The Administrative Officer of the Courts (AOC) explains this legislation defines an unlicensed person as "a person who is not a firearm dealer." In facilitating this transfer, the firearm dealer would be required to conduct a background check and comply with all federal and state laws. A background check by a firearm dealer means utilizing the national instant criminal background check system (NICS) to determine whether the transferee is prohibited from possessing or receiving firearms under federal or state law before approving the transfer of the firearm between the two unlicensed parties.

This bill defines “transfers” to include selling, trading, or lending of a firearm with or without consideration. The Attorney General’s Office (AGO) points out that under current New Mexico law, a private citizen who lawfully owns and possesses a firearm may “transfer” that firearm to another citizen who may lawfully own and possess firearms without any regulatory oversight, as long as that “transfer” takes place wholly within New Mexico. It is against Federal law to “transfer” a firearm across state lines or to a non-resident of New Mexico without a federal background check completed by a licensed firearms dealer.

The AGO explains the bill would require private citizens to conduct the transfer at the place of business of a licensed New Mexico firearms dealer and to pay the firearms dealer a reasonable fee for conducting the transfer and the federal background check by following the same regulatory process that would have to be followed if the firearm were being purchased directly from the dealer.

The provisions in the bill would exempt firearms transfers between: family members, by or to a firearm dealer, by or to a law enforcement agency, by or to a law enforcement officer, a member of the armed forces or a level three security guard if acting within the course and scope of their employment and official duties. Also exempt are transfers involving:

- an executor, administrator, trustee or personal representative of an estate or trust, when the transfer is due to the death of the owner of the firearm;
- a temporary transfer to prevent imminent death or great bodily harm;
- a temporary transfer that takes place at a shooting range, while hunting or trapping, at a lawful and organized competition, practice or performance involving the use of firearm, or in the presence of the transferor.

FISCAL IMPLICATIONS

According to the AOC, there will be a minimal administrative cost 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.

According to the AGO, prosecutorial and law enforcement agencies, including the AGO, would be required to dedicate resources to investigating and prosecuting unlawful transfers of firearms.

The bill does not contain an appropriation.

SIGNIFICANT ISSUES

The AGO stated concern surrounding the exceptions enumerated in the bill, as it is unclear whether a transferor is required to have knowledge or obtain knowledge in order make a determination that would be in compliance with the law.

For example, “under the temporary circumstances described in the bill, it is unclear what a transferor’s responsibility is to determine whether a transferee is prohibited from possessing or receiving firearms by federal or state law. For example, if while hunting one hunter transfers a firearm to another hunter who happens to be prohibited by federal law from carrying a firearm,

the bill would allow for prosecution of the transferor even if he or she did not know that the transferee was prohibited by federal law from carrying a firearm. Therefore, it is unclear if the bill requires some sort of active screening by the transferor of the transferee prior to the temporary transfer. Under the circumstances described in the exceptions allowing for temporary transfers, such active screening would be unrealistic to expect of the transferor.”

“Similarly, the bill allows the transfer at a shooting range ‘authorized by the governing body of the jurisdiction in which the range is located or, if no such authorization is required, operated consistently with local law in the jurisdiction.’ It is unclear whether a transferor would be required to investigate the status of the shooting range prior to the transfer. As written, the transferor could potentially be prosecuted if the shooting range did not ‘operate consistently with local law in the jurisdiction.’”

The AOC explains the bill would essentially require a background check be conducted through NICS for all firearm transfers between individuals who are not a firearm dealer or specifically exempt from this new law. Enforcement of this new crime may be problematic as the majority of gun transactions are conducted by private individuals. A criminal defendant who cannot produce documentation that a firearm was purchased or exchanged subsequent to a background check on NICS would likely have this additional criminal charge added to existing charges.”

PERFORMANCE IMPLICATIONS

Prosecutorial and law enforcement agencies, including the Office of the Attorney General, would be required to dedicate resources to investigating and prosecuting unlawful transfers of firearms.

OTHER SUBSTANTIVE ISSUES

The AGO points out this bill appears modeled on similar legislation proposed or passed around the country in the last few years. For example, the language of the bill closely mirrors Nevada’s recently passed “Ballot Question 1.”

TR/al/sb