

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: January 29, 2025

Check all that apply:

Bill Number: HB 162

Original X Correction
Amendment Substitute

Sponsor: Rep. Jimmy Mason
Rep. Randall T. Pettigrew
Rep. Jack Chatfield
Rep. Joseph L. Sanchez
Rep. John Block

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing Analysis: Peter James O’Connor

Short Title: REPEAL FIREARM SALE
WAITING PERIOD

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25 | FY26 | | |
| | | | |
| | | | |

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY25 | FY26 | FY27 | | |
| | | | | |
| | | | | |

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|---------------------------------|------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **None discovered.**
 Duplicates/Relates to Appropriation in the General Appropriation Act **NA**

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

HB 162 would repeal NMSA 1978 § 30-7-7.3 “Unlawful sale of a firearm before required waiting period ends.”

Presently, the statute to be repealed, § 30-7-7.3, requires a waiting period for the transfer of a firearm from seller to buyer (or any similar transfer) of either (1) seven days within which a federal instant background check is completed, or (2) seven days plus the time it takes to complete the federal instant background check, or (3) twenty days if a federal instant background check is not completed.

Violations of the statute are misdemeanors.

The statute provides several exceptions for transfer without waiting, including transfer to a buyer who holds a federal firearms license, a buyer who holds a New Mexico concealed handgun license, a buyer who is a law enforcement agency, a transfer between two law enforcement officers who are certified pursuant to federal law or the New Mexico Law Enforcement Training Act, and between immediate family members.

As explained, section 30-7-7.3 criminalizes certain activity related to firearms, *i.e.*, the transfer from seller to buyer before the completion of the statutory waiting period. Laws criminalizing activity related to firearms may raise questions of constitutionality under the Second Amendment. However, it should be noted that a ten-day waiting period for all firearms purchases was upheld by the Ninth Circuit Court of Appeals in *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016). Additionally, in 2018, the Supreme Court declined to hear an appeal from the 9th Circuit Court of Appeals holding that California’s ten-day waiting period did not violate the second Amendment. *Silvester v. Becerra*, 138 S. Ct. 945 (2018).

Importantly, because HB 162 would not criminalize activity related to firearms but instead repeal the criminalization of such activity, it does not raise federal or state constitutional questions.

The effect of repealing § 30-7-7.3 does not conflict with the New Mexico Constitution, Article II, Section 6, “Right to Bear Arms,” which guarantees New Mexican citizens the right to gun ownership with a few exceptions.

The effect of repealing § 30-7-7.3 does not conflict with federal law, which does not require a waiting period for purchasing a firearm from a federally licensed dealer, meaning

Finally, the effect of repealing § 30-7-7.3 does not conflict with the U.S. Constitution, Amendment II, “Right to Keep and Bear Arms,” which guarantees U.S. citizens the right to gun ownership with a few exceptions.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

NA