

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date 2/6/2025

Bill No: SB 255-280

Sponsor: Michael Padilla
Short Title: Sale of Firearms without Background Check

Agency Name and Code Number: LOPD-280
Person Writing: Thomas Lewis
Phone: 505-395-2826 Email: Thomas.Lewis@lopdnm.us

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 Expenditure 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:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The Bill seeks to curb the use of online platforms to sell firearms without a background check of the purchaser. The Bill would amend Section of 30-7-7.1 NMRA (prohibiting the sale of a firearm without conducting a federal instant background check of the buyer). The Bill would create a new offense by adding a Subsection C defining “Facilitation of the unlawful sale of a firearm without a background check” as “allowing or failing to prevent by reasonable means an unlawful firearm sale through the operation of a publicly available platform in which reasonable, industry standard steps could be taken to block or limit the unlawful sale of a firearm but, through either action or inaction, the unlawful sale of a firearm without a background check is not prevented.”

The Bill would further amend Subsections E, F, G, and H to provide that each firearm sold in violation of Subsection A (the original statutory provision) and Subsection C (the added Facilitation language) would constitute a separate offense. Further, the penalty for any such violation would be increased from a misdemeanor to a third-degree felony.

The Bill would also amend Section 30-42-3 (the Racketeering Act) to add a new Subsection 27 including “unlawful sale of a firearm without a background check and facilitation of the unlawful sale of a firearm without a background check” in the enumerated criminal acts subject to the Racketeering Act. Violation of the Racketeering Act is a second-degree felony and also carries potential forfeiture and civil liability under Section 30-42-4 and 30-42-6.

FISCAL IMPLICATIONS

Creating new crimes with increased second or third-degree felony penalties would result in more accused persons opting to take their cases to trial. Preparing cases for trial must be handled by senior-level felony Public Defender attorneys (Trial Attorneys). Depending on the volume of charges initiated by a given district attorney in a locale, there may be a recurring increase in needed LOPD FTEs for the office as well as a need for funds for contract counsel compensation. A Trial attorney’s mid-point salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas (due to salary differential required to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51.

SIGNIFICANT ISSUES

The Bill would attach felony penalties to anyone “allowing or failing to prevent” unlawful firearm sales by means of any online platform where industry-standard safeguards are not in place. There are several problems with this language. “Allowing or failing to prevent” is insufficiently defined and sweeps so broadly that it would be difficult for persons using or operating such a platform to know what conduct would violate it. Further, the industry standards themselves are not defined.

The above uncertainties would provoke much litigation, with the financial consequences for LOPD referred to above. Further, there has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

Additionally, conspiracy charges and accomplice liability for “aiding and abetting” are already available for someone who intentionally participates in this type of transaction. *See* NMSA 1978, §§ 30-1-13 (accessory), 30-28-2 (conspiracy).

PERFORMANCE IMPLICATIONS

Enactment of any higher criminal penalty is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. If more higher-penalty trials result from enactment, LOPD may need to hire more trial attorneys with greater experience to address these additional trials and ensure compliance with constitutional mandates of effective assistance of counsel.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None known.

TECHNICAL ISSUES

None known.

OTHER SUBSTANTIVE ISSUES

None known.

ALTERNATIVES

The status quo.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo.

AMENDMENTS

None known.