

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: 2/5/25

Check all that apply:

Bill Number: SB 255

Original X Correction
Amendment Substitute

Sponsor: Sen. Michael Padilla

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

SALE OF FIREARMS WITHOUT BACKGROUND CHECK

Person Writing Analysis: Autumn Bergh

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Table with columns: Appropriation (FY25, FY26), Recurring or Nonrecurring, Fund Affected

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Table with columns: Estimated Revenue (FY25, FY26, FY27), Recurring or Nonrecurring, Fund Affected

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

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:

SB 255: creating the crime of facilitation of the unlawful sale of a firearm without a background check; providing penalties; adding unlawful sale of a firearm without a background check and facilitation of the unlawful sale of a firearm without a background check to the definition of "racketeering," would amend NMSA 1978 Section 30-1-7.1, Unlawful sale of a firearm without a background check and NMSA 1978 Section 30-42-3, definitions for the Racketeering Act:

Section 1 proposes amendments to NMSA 1978 Section 30-1-7.1, Unlawful sale of a firearm without a background check. Amendments include creating the crime of facilitation of the unlawful sale of a firearm without a background check as subsection (C), which “consists of 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 penalty for an unlawful sale of a firearm without a background check is currently a misdemeanor; the amendments would make a violation of the provisions of the section a third degree felony.

Section 2 would amend NMSA 1978 Section 30-42-3, definitions for the Racketeering Act, to include in the definition for “racketeering” the “unlawful sale of a firearm without a background check and facilitation of the unlawful sale of a firearm without a background check, as provided in Section 30-7-7.1 NMSA 1978.”

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Section 1(C) requires only that the sale occurred, and there appears to be no element of intent or negligence. While most crimes require intent or negligence as an element of the crime, it appears

that mental state would not matter under Section 1(C).

Critics of strict liability believe it is unfair to punish someone for a crime when they neither had bad intentions nor acted negligently. Without requiring proof that someone acted with criminal intent, a law allows strict liability to capture otherwise law-abiding people. Imposing liability for conduct that average people don't recognize as criminal may make it difficult for reasonable people to know what the law requires. Paul J. Larkin, Jr., *Strict Liability Offenses, Incarceration, and the Cruel and Unusual Punishments Clause*, 37 Harvard J.L. & Pub. Pol'y 1065 (2014).

PERFORMANCE IMPLICATIONS

SB 255 could expand the scope of criminal violations that the Attorney General has prosecutorial jurisdiction over and could require additional resources from the Special Prosecutions Division.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to:

SB 70: Add Racketeering Crimes; some proposed amendments include adding multiple crimes to the definitions section of the Racketeering Act, NMSA 1978 Section 30-42-3

SB 244: Unlawful Transfer of Firearm to a Minor; SB 244 proposes to create the crime of unlawful transfer of a firearm to a minor and to add the crime to the definitions section of the Racketeering Act, NMSA 1978 Section 30-42-3.

HB 39: Juvenile Record in Firearm Background Checks; proposed amendments include amending NMSA 1978 Section 32A-2-26 to permit access to juvenile delinquency records (dispositions) "involving use of a firearm for a delinquent act that would be a felony if committed by an adult . . . for purposes of conducting a federal instant background check" to determine "whether a person may receive, transport or possess a firearm or destructive device . . . pursuant to Subsection A of Section 30-7-16 NMSA 1978."

HB 162: Repeal Firearm Sale Waiting Period, which would remove the seven-day waiting period before transferring the firearm to the buyer.

HB 235: Firearms & Certain Persons; regarding prohibition of certain persons from receiving, transporting, or possessing firearms, including felons, persons subject to an order of protection pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978, and persons convicted of certain enumerated crimes, and proposing to add undocumented aliens.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

For purposes of clarity, consider adding a definition for the following terms: "publicly available

platform,” “reasonable means,” and “facilitation.”

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A