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FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 03/16/01 HB 310/HJCS/aHFI#1
 SHORT TITLE: Handgun Safety Standard Act SB _____
 ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
				Recurring	General Fund

SOURCES OF INFORMATION

LFC Files
 Attorney General (AG)

SUMMARY

Synopsis of HFI#1 Amendment

House Floor amendments to HB310/HJCS:

- C following “trigger safety” strikes “lock”;
- C Inserts “dealer” instead of a “seller”; and
- C Inserts “knowingly” after “who”.

Synopsis of Bill

HB310/HJCS creates the Handgun Safety Standard Act and commission. The nine Commission members are two members of the house and the senate (one democrat and one republican from each), the attorney general, chief of the New Mexico State Police, the Secretary of Health, a representative of the handgun industry appointed by the governor, and a mechanical engineer, appointed by the governor. Staff services are provided by the Attorney General’s Office. Duration of the commission will be the time in which the standards are promulgated. If the governor deems it necessary, he may reestablish the commission for a period of time he will designate. The Commission will designate which existing state agency will be responsible for administering the act, advertising, implementing and enforcing the standard after the Commission is dissolved. The governor must approve the commission’s designation.

According to the AG the bill includes new or revised definitions: a) authorized user (adds “person the owner has enabled to use”); b) grace period; c) handgun (a more comprehensive and uniform definition); d) integrated mechanical safety device (defined as not a trigger lock) and e) personalized handgun.

Within the first year of the Commission’s existence, performance standards will be adopted for all handguns in the state. Requirements in the standard include 1) **personalized handgun must be manufactured** so that it may only be fired by the authorized user; 2) requiring the technology creating the personalized handgun is a part of the original design of the handgun; 3) mandating that the personalizing of the handgun can not readily be deactivated.

Those individual wishing to manufacture, offer for sale or transfer handguns in the state must submit a prototype of the model for testing. An independent laboratory that is readily familiar with the standards of the Commission must test all handguns. If the handgun fails the laboratory testing procedures it shall not be allowed in the State. If it passes the testing, it shall be certified stating “certified Personalized handgun.” No alternation may occur to the design of the handgun once it has been certified.

After four years from the adoption of the commission standards, any handgun not being certified by the state shall not be allowed. Discovery of such a handgun by law enforcement personnel allows the officer to take possession of the handgun **except if it is an exempt handgun as explained in Section 6 of this bill**, which will then be forfeited and destroyed. The Attorney General may bring actions against sellers, manufacturers or possessors of handguns to enjoin violations of the Act and for such other relief as may be appropriate.

Exemptions from the Act are 1) antique handguns, 2) handguns manufactured prior to the four years from adoption of the commission’s safety standard (these guns may not be sold or transferred by dealers **unless seller is not the owner and is selling as a sales agent for a private party**), 3) New Mexico state and federal law enforcement officer’s handguns **for official use**, 4) those possessed by law enforcement officers on official assignment in this state from any state that reciprocates the same courtesy to our law enforcement officers, those that are apart of the official equipment of a federal agency **5) handgun is inherited; 6) handgun possessed by a nonresident when traveling through the state; 7) handgun possessed by a nonresident residing in this state for less than 180 days and 8) handgun possessed by a new resident for up to 180 days.**

Violation of the Act for manufacturing possessing or selling or offering to sell, trading, transferring or acquiring a non certified handgun is punishable as a fourth degree felony. A person who alters the personalization of the handgun is guilty of a misdemeanor.

Liability for personal injury by a handgun, which does not meet the Commissions standards, shall bear absolute liability for damages. When an unauthorized person discharges an uncertified handgun, and personal injury results, there will be absolute liability for damages **unless the handgun has been stolen**. This liability section does not apply when discharging the handgun is legally justified.

Significant Issues

The AG reports there are:

1. Commerce clause issues.
2. Second Amendment, or Right of Citizen to Bear Arms issue.

FISCAL IMPLICATIONS

The AG would necessary have additional duties in (staff) supporting the Commission. Bill would potentially have an impact of both fiscal/administrative nature of hiring additional FTEs by the AGO.

OTHER SUBSTANTIVE ISSUES

According to the AG, the bill would substantially impact interstate commerce in that manufacturers from other states would have a substantially harder time making their handguns marketable in the state than is now the case. The bill requires an independent laboratory to certify that each type of gun a manufacturer offers for sale in the state meets the Commissions requirement. It is probable, though not stated in the Bill, that the manufacturer will bear the cost of the laboratory. By definition, the manufacturer will also bear the cost of the modification of the gun, which will raise the price of the gun for the consumer as well.

Second amendment issues, both state and federal should be considered. Article II, Section 6 of the New Mexico Constitution, the right to bear arms, allows citizens to possess arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. Inherent in this power and memorialized in case law is the authority for the state to reasonably regulate the manufacture or sale of handguns for the protection of its citizens. The issue becomes, is this bill reasonably and rationally related to the protection of the public. As long as the modifications needed to make handguns certifiable are reasonably related to the above governmental purpose, the answer will be in the affirmative. This writer has no indication how laborious or onerous those modifications will be and therefore could not even speculate as to the answer to this question.

Preemption issues must also be explored. We could find no federal regulations governing the modification of this sort although firearms are generally heavily regulated. See 28 CFR 178. The gun control Act of 1968 specifically disavowed any intent of the federal government to occupy the field of gun control to the exclusion of the states police powers. It may be concluded that only if there is a direct and positive conflict between this bill and federal regulations concerning handgun manufacture or distribution a preemption issue does not exist. We did not find such conflict in our search of federal regulations.

LAT/njw