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FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR Garcia **LAST UPDATED** 01/29/15 **HB** 44

SHORT TITLE Firearm Transfer Act **SB** _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 44 creates the Firearms Transfer Act. The Act generally requires background checks for firearms transactions at gun shows and provides for the reporting by the Administrative Office of the Courts (AOC) to the FBI's National Instant Criminal Background Check System.

The Act requires a vendor at a gun show (other than a federally-licensed gun dealer) to request a background check of a prospective transferee (other than a federal firearms licensee or the holder of a valid New Mexico gun license) to ascertain his or her eligibility to possess a firearm. The background check (required by federal law) must be conducted by a federal firearms licensee, who must complete the paperwork required for the check. If the check reveals that the transferee is prohibited from receiving a firearm, the federal firearms licensee shall inform the vendor and transferee of that fact and the transfer must not occur.

The Act also requires a gun show organizer to arrange for one or more federal licensees to be on the premises of the gun show to obtain the required background checks. It also requires the gun

show organizer to display prominent signage at gun shows regarding the background check requirements and to arrange for any fee (up to a maximum of \$25) that may be charged for a firearm transfer. The background check requirement does not apply to the transfer of antique or relic firearms. However, antique or relic firearm does not include those which can be readily converted to use fixed ammunition.

A transferor or vendor who complies with the background check requirement is immune from civil liability unless he or she knows or reasonably should know that the recipient/transferee is likely to commit an unlawful act involving the firearm or intends to transfer the firearm to an unqualified third party. The Act bill designates the unlawful transfer or receipt of a firearm and the unlawful transfer of a firearm as a misdemeanor, and designates the failure to arrange for a federal firearms licensee to be on the premises of a gun show and the failure to display the required notices at a gun show as a petty misdemeanor.

The Act indicates that no record created or maintained pursuant to it shall be subject to the Inspection of Public Records Act (IPRA). The Act also cannot be construed to require any state agency or officer to compile or maintain a registry, roster, list or other compilation of firearms transfers or firearms owners from any record required to be created or kept pursuant to the Act.

The Act requires the AOC to obtain and report to the FBI's National Instant Criminal Background Check System (NICS) any information from court proceedings relating to an individual's eligibility to possess or receive firearms pursuant to state or federal law. The AOC is directed to transmit only such information as necessary to identify the person. Information transferred must only be used for the purpose of inclusion in the System. A person reported to the FBI by the AOC may inspect and correct any information in the report and may petition for a re-determination. If a re-determination is made, the AOC must report it promptly to the FBI.

Finally, the Act is repealed on the effective date of any federal law requiring a background check for the transfer of a firearm, other than a firearm defined in 26 USC Section 5845 (a), between two persons who are not federal firearms licensees and who reside in the same state, whether or not the transfer takes place at a gun show; or on the effective date of any federal law which expressly exempts the state from enforcing the Act (other than the repeal section).

FISCAL IMPLICATIONS

HB 44 carries no appropriation. Its fiscal impact is indeterminate.

AGO analysis states "if the role the Office of the Attorney General is supposed to serve requires personnel and resources, then additional funding will need to be allocated."

SIGNIFICANT ISSUES

DPS analysis states that the Act will support the sharing of mental health records in compliance with the 2008 NICS Improvement Act by codifying New Mexico Administrative Office of the Courts reporting disqualifiers to the Federal Bureau of Investigation (FBI), National Instant Background Check System (NICS); and creating a relief mechanism for persons entered into the Denied Persons file in NICS through the judicial process. If granted, then individuals would be removed from the file.

The Act creates two new crimes for violations of the Act for “unlawfully transferring a firearm at a gun show,” consisting of transferring or receiving a firearm or attempting to transfer or receive a firearm without the required background check or transferring or receiving or attempting to transfer or receive a firearm after the background check reveals that the transferee is prohibited from receiving a firearm. HB 44 provides the following penalties:

- Misdemeanor: for unlawfully transferring a firearm at a gun show.
- Petty misdemeanor: for failing to arrange for a federal firearms licensee to be on the premises of a gun show or failing to display the background check notice at a gun show as required by the FTA.

AGO analysis states:

In Section 4 subsection C, the qualifying language of “as reflected on promotional material or advertising for the gun show” might allow for numerous loopholes. The language as it currently drafted might be interpreted to not require an organization or multiple organizations or multiple people to comply with subsection C(1) and subsection C(2).

In Section 10 subsection F, the redetermination hearing is on the record and sealed. An appeal from that hearing is also on the record, but from the current language, the appeal does not appear to be sealed.

As drafted, HB 44 requires a copy of the petition seeking redetermination of mental condition to be served on the Office of the Attorney General. As drafted, it is unclear what role, if any, the Office of the Attorney General would serve in the de novo hearing on the matter.

ADMINISTRATIVE IMPLICATIONS

If the role the Office of the Attorney General is supposed to serve requires personnel and resources, then additional funding will need to be allocated.

OTHER SUBSTANTIVE ISSUES

The bill should probably provide that the IPRA statutory exceptions found at Section 14-2-1 NMSA 1978 should be amended to include the new exception listed in the bill.

The bill as it is currently drafted in Section 10 may not provide enough guidance to a court in how to determine competency, dangerousness, burden of proof, and standard of review

CAC/je