

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.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 20JAN2024

Bill No: HB 58

Sponsor: Stefani Lord

Short No Background Check For

Title: Firearm Sales

Agency Name
and Code

790- Department of Public Safety

Number:

Person Writing Jessica Rodarte

Phone: 505-699-5422 Email Jessica.Rodarte@dps.n

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	N/A	N/A	N/A

(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

HB 58 proposes to repeal Sec. 30-7-7.1 of the Criminal Code thereby abolishing the provision that makes it unlawful to sell a firearm without conducting an instant background check.

FISCAL IMPLICATIONS

No fiscal implications to the Department of Public Safety.

SIGNIFICANT ISSUES

A Federal Firearms Licensee (FFL) cannot sell a firearm without conducting a background check pursuant to federal law.

On November 30, 1993, the Brady Handgun Violence Prevention Act was enacted, amending the Gun Control Act of 1968. The Brady Act imposed as an interim measure a waiting period of 5 days before a licensed importer, manufacturer, or dealer may sell, deliver, or transfer a handgun to an unlicensed individual.

New Mexico is a Brady State, which means that the FBI conducts background checks on all firearm sales.

PERFORMANCE IMPLICATIONS

None identified.

ADMINISTRATIVE IMPLICATIONS

The Department of Public Safety (DPS), Administrative Office of the Courts (AOC), and all law enforcement agencies across the state respond to the Federal Bureau of Investigations (FBI) when a National Instance Background Check System (NICS) check is conducted once an application for a firearm is submitted from an FFL. FFLs, such as gun shop owners, pawn shop dealers, and retailers use NICS to determine whether a person can legally buy or own a firearm. A NICS check

will verify if the applicant has any of the following prohibitors for owning a firearm:

- Conviction for a “crime punishable by imprisonment for a term exceeding one year” (includes convicted of a misdemeanor crime punishable by imprisonment for more than two years)
- Active indictment or information for a “crime punishable by imprisonment for a term exceeding one year”
- Fugitive from justice
- Unlawful use of or addiction to federal controlled substance
- Adjudicated as a mental defective or committed to a mental institution.
- Illegal/unlawful alien
- Dishonorable discharge from the Armed Forces
- Renounced U.S. citizenship
- Subject of qualifying protection/restraining order
- Conviction for a “misdemeanor crime of domestic violence”
- State firearm prohibition or court-ordered firearm restriction

All agencies are federally required to respond to these requests within three days of receiving a request from NICS. If no response is received the applicant will be cleared to purchase the firearm.

While this bill will not remove the federal background check requirements for FFL’s, it would eliminate a vital public safety measure that requires most non-FFL’s to conduct a background check. This irresponsible measure will lead to more dangerous individuals acquiring firearms and increase the likelihood of more gun violence.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified.

TECHNICAL ISSUES

Federal Law Governs Background Checks: As described above, federal law governs the requirement for background checks for FFLs. No change to state law can affect this. Thus, because background checks are preempted by federal law, this bill has minimal effect.

Repeals the State Crime, But Not the Federal Requirement: This bill would no longer criminalize a person at the state law level for not conducting a background check. However, federal law still remains.

Structure of Bill May Cause Confusion: The bill’s title states that it will “eliminate the background check requirement for sale of a firearm.” However, that is not what this bill does. This bill removes the criminal liability established in state law for failure to conduct a background check. As previously mentioned, it does nothing to change the requirements for background checks because those requirements are found in federal law. While this would repeal the requirement for two entities that are not FFLs to go to an FFL for a background check, it does not eliminate background checks in entirety as the title suggests.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.