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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/21/2019  
**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Garcia, M. **HB** 35

**SHORT TITLE** Firearms Licensee Stolen Gun Checks **SB** \_\_\_\_\_

**ANALYST** Edwards

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	\$161.2	\$161.2	Recurring	Department of Public Safety (fees)
	Unknown	Unknown	Recurring	Unknown (fines)

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	Unknown

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 8, HB 40, SB 8, SB 201

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 New Mexico Attorney General (NMAG)

#### Responses Not Received From

Department of Public Safety (DPS)  
 Association of Counties  
 Municipal League

## SUMMARY

### Synopsis of Bill

House Bill 35 requires federal firearms licensees to verify if a firearm they purchased is stolen with the Department of Public Safety (DPS) within one day of acquiring the firearm. DPS would utilize resources available to attempt to determine whether a firearm was stolen.

This legislation would require a federal firearms licensee to pay an annual fee of \$200 to DPS to administer the provisions of this new section on or before July 1 of each year. The penalty for a licensee willfully or knowingly violating the provisions of this new section is a civil penalty of \$2,500 or the value of the firearm purchased, whichever is greater, for each violation. If a firearm is determined to be stolen, the licensee shall surrender the firearm to DPS or to law enforcement.

## FISCAL IMPLICATIONS

DPS has not yet submitted an analysis of this bill; making it difficult to estimate the amount of revenues the bill may generate.

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), in October 2018 there were 806 registered firearms dealers in the state. The bill would require all 806 licensees to pay DPS \$200 annually, meaning the department would receive about \$161 thousand in fees per year to carry out the bill. Without DPS analysis, it is unknown whether the revenues are enough to cover the agency's costs or other concerns.

The fines in House Bill 35 will increase revenues. However, the bill does not define which agency or entity is responsible for assessing a fine from a licensee nor who collects the fines and where the collected fines are allocated. The estimated amount received from the \$2,500 fine applicable when a person knowingly violates the provisions of the bill is not known. Data showing the prevalence of federal firearms licensees knowingly selling stolen firearms is not available.

## SIGNIFICANT ISSUES

The Administrative Office of the Courts explains:

Nationally, only eleven states plus the District of Columbia require firearm owners to report the loss or theft of firearms to law enforcement. New Mexico does not have any such law requiring owners of firearms to report their theft. The national criminal information center (NCIC) maintains 21 databases, one of which is a "gun file" which records lost, stolen and recovered firearms. Only certified individuals with law enforcement agencies can query the NCIC databases. The information contained in the NCIC database is obtained from records entered by criminal justice agencies. If a gun is not reported stolen, then it will likely not be contained in the NCIC database.

A federal firearms licensee is required to keep a registry of all firearm sales for at least 20 years. The licensee must have the purchaser fill out Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473, "firearms transaction record", and submit the information to the national instant criminal background check system (NICS) to determine if the

purchaser is prohibited from possessing a firearm. There is no national registration system of serial numbers for firearms. The National Tracing Center is the only organization authorized to trace firearms for law enforcement agencies. The center will only conduct a search for a stolen firearm that is the subject of a criminal investigation. There is no national database or system that can definitively determine whether a firearm is stolen for private firearm transactions.

This legislation appears to deny a licensee of due process rights by automatically requiring the licensee to surrender a firearm if it is determined to be stolen by the department. This legislation does not establish the burden of proof necessary to prove if a firearm is stolen and does not provide for any type of appellate review or administrative hearing to determine whether a licensee should surrender a firearm. In addition, this legislation does not indicate what law enforcement or the department should do with the surrendered stolen firearm.

### **ADMINISTRATIVE IMPLICATIONS**

From a fiscal perspective, this legislation does not specify who is responsible for assessing a fine to a licensee. In addition, this legislation does not indicate who should collect the fines and how the fines are ultimately allocated.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 35 is related to the following:

House Bill 8 – Background Check for Firearm Sales

House Bill 40 – Background Checks at Gun Shows

Senate Bill 8 – Firearm Sale Background Check

Senate Bill 201 – Firearm Transfer Act

### **ALTERNATIVES**

AOC states “if the purpose of this legislation is to prevent the sale of stolen firearms, an alternative would be to pass legislation that would require a person to report the loss or theft of a firearm to law enforcement and require law enforcement to enter this data into the NCIC gun file.”

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