

	FY24	FY25	FY26	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

House Bill (“HB”) would add a new section to New Mexico’s criminal code that would: (1) prohibit the purchase of automatic or semiautomatic firearms by anyone under the age of 21; (2) prohibit the possession of automatic or semiautomatic firearms by anyone under the age of 21, except for enumerated purposes, or under enumerated circumstances; (3) prohibit the purchase or possession of any large-capacity ammunition feeding device by anyone under the age of 21; (4) prohibit the “knowing” sale or transfer of the targeted types of firearms to a person under the age of 21; and (5) create a number of new misdemeanor crimes for: (a) the purchase of automatic or semiautomatic firearms by anyone under the age of 21, (b) the possession of automatic or semiautomatic firearms for anyone under the age of 21, except under limited circumstances, (c) the purchase or possession by anyone under the age of 21 of any large-capacity ammunition feeding device, and (d) the “knowing” sale of any automatic or semiautomatic firearm or large-capacity ammunition feeding device to anyone under the age of 21, except under limited circumstances.

HB 127 provides definitions for the term “firearm,” “automatic firearm,” “large-capacity ammunition feeding device,” and “semiautomatic firearm.”

HB 127 makes exceptions where the person under 21 is a peace officer, in the military, OR, on private property AND “under the control” of, and supervised by, the person’s parent, grandparent, or legal guardian.

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

This law would criminalize activity related to the purchase, possession, and sale of firearms, which raises questions of constitutionality under the Second Amendment. In 2022, the US Supreme Court struck down a New York state law requiring gun owners to have a license for any gun inside of their home, holding that, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *New York State Rifle & Pistol Assn, Inc. v. Bruen*, 142 S.Ct. 2111, 2126 (2022). The *Bruen* Court created a two part test for governments wishing to regulate the conduct of citizens under the Second Amendment, which requires the government not just to posit that any regulation covering an individual’s

conduct, “promotes an important interest,” but also to “demonstrate that the regulation is consistent with this Nation’s historical tradition” under the Second Amendment. *Id.*

While it appears that a number of states have enacted laws limiting gun ownership rights for persons under the age of 21, the U.S. Court of Appeals for the Fourth Circuit recently found that “18-year-olds possess Second Amendment rights,” and held unconstitutional “several federal laws and regulations” preventing “federally licensed gun dealers from selling handguns to any 18-, 19- or 20- year old.” *Tanner Hirschfield; Natalia Marshall v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, Opinion 19-2250, decided and published by the U.S. Court of Appeals for the Fourth Circuit on 7/13/2021 (Docket No. 71).

Additionally, the *Bruen* Court listed a number of Supreme Court cases recognizing that, “the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense.” *Id.*, at 2122. HB 127 does not address the issue of purchase or possession in the home for the purpose of self-defense.

HB 127 could result in constitutional challenges that have not been addressed in this jurisdiction.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

No direct administrative implications to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship to: HB 129 – Firearm Sale Waiting Period

Relationship to: HB 46 – Felon in Possession of Firearm Penalty

Relationship to: HB 47 – Unlawful Firearms While Trafficking

Relationship to: HB 58 – No Background Check for Firearm Sales

TECHNICAL ISSUES

See Other Substantive Issues, below.

OTHER SUBSTANTIVE ISSUES

HB 127 creates a series of misdemeanor crimes related to the purchase and possession of certain firearms by anyone under the age of 21, as well as the sale of certain firearms, under certain circumstances, to anyone under the age of 21. Many (if not all) of the proposed crimes require a finding of either specific intent (knowing) or require certain circumstances to fall within an exception. These elements would not be easy to prove beyond a reasonable doubt, e.g. what did the seller “know” about what uses the buyer intended for the firearm? Or what does it mean that the person under 21 is “under the control” of a guardian?

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

See Other Substantive Issues, above.