

LFC Requester:	Scott Sanchez
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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:

Date Prepared: Jan. 31, 2024

Original _____ **Amendment** _____
Correction _____ **Substitute** X

Bill No: HB129s

Sponsor: Rep. A Romero
Rep. D. Hochman-Vigil
Rep. L. Serrato
Rep. C. Parajon
Sen. L. Lopez

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: FIREARM SALE
WAITING PERIOD
CRIMES

Person Writing Analysis: Meryl Francolini
Phone: 505-537-7676
Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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						

(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

Synopsis: HB129 would add a new section to New Mexico’s criminal code, Section 30-7-7.3 NMSA 1978, that would: (1) impose a required 14-business-day waiting period for the sale of firearms and transfers of ownership to firearm buyers in New Mexico, and (2) create a new misdemeanor crime of unlawful sale of a firearm before the required 14-day waiting period ends. The crime consists of transferring ownership, possession, or physical control of a firearm from a buyer to a seller before the end of the required 14-day waiting period or, if required, before the completion of a required federal instant background check. If such background check is not completed within the required 14-day waiting period, sale/transfer of a firearm is still prohibited. The firearm must also remain in the custody of a seller for the entire 14-day period. Firearm sales between immediate family members are explicitly exempt from the waiting period requirement.

HB129 specifies that each party to an unlawful sale under the statute may be charged separately for the same sale, and that because each firearm sold contrary to the statute constitutes a separate offense, two or more offenses may be charged at a time and shall be punished as separate offenses.

HB129 also requires records of gun sales to be available for inspection upon request of a law enforcement agency.

HB129 does not list an effective date.

Committee Substitute

The substitute bill replaces “business days” with “calendar days,” making the required waiting period a true 14 days at minimum. It also adds language indicating that the crime of unlawful sale before the required waiting period does not include temporary possession or control of a firearm provided to a customer by the proprietor of a licensed business in the conduct of that business.

The substitute bill adds a definitional section which includes a definition of “firearm” and a more comprehensive definition of “immediate family member.”

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

Laws criminalizing activity related to firearms often raise questions of constitutionality under the Second Amendment. However, it should be noted that a ten-day waiting period for all firearms purchases was upheld by the Ninth Circuit Court of Appeals in *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016). Additionally, in 2018, the Supreme Court declined to hear an appeal from the 9th Circuit Court of Appeals holding that California's ten-day waiting period did not violate the second Amendment. *Silvester v. Becerra*, 138 S. Ct. 945 (2018).

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

No direct administrative implications to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict: HB58 (eliminating the background check requirement for firearm sales by repealing Section 30-7-7.1 NMSA 1978)

Duplicate (in part): SB69 (creating the same 14-day waiting period requirement, with certain differences that may conflict with HB129)

Relationship to: HB127 (establishing a minimum age of 21 to purchase or possess certain types of firearms and making it a crime for a person under 21 years of age to purchase or possess those firearms)

Relationship to: HB114 (enacting the Firearm Industry Accountability Act, which in part requires firearm sellers to implement reasonable controls and procedures regarding the sale of firearms, and to comply with state laws regarding gun sales and refrain from unlawful gun sales)

TECHNICAL ISSUES

See Other Substantive Issues, below.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A