

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 1/24/2024
Bill No: HB 168-280

Sponsor: Reps. Jenifer Jones, Stefani Lord, & Andrea Reeb
Short Title: NO FIREARMS FOR UNDOCUMENTED PERSONS

Agency Name and Code LOPD 280
Number: _____
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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: HB 46 (Felon in Possession of Firearm Remedy); HB 198 (Felon in Possession of Firearm Penalty)

Duplicates/Relates to Appropriation in the General Appropriation Act: None known

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

This appears to be similar to HB 514-280 which was submitted during the 2023 legislative session.

HB 168 would amend Subsection A(3) of NMSA 1978, Section 30-7-16 to make it unlawful for an undocumented person to receive, transport, or possess a firearm or destructive device.

HB 168 would also alter Subsection D to make it a misdemeanor offense if an undocumented person is convicted.

Finally, in Subsection E, HB 168 would define an “undocumented person” to mean “an individual not legally present in the United States at the time of receiving, transporting, or possessing a firearm or destructive device.

FISCAL IMPLICATIONS

There would likely to be a moderate fiscal impact on the Law Offices of the Public Defender if this bill were to pass. While the LOPD would likely be able to absorb some additional cases under the proposed law, any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates. In addition, because of the complexity of immigration issues for undocumented persons, there would likely be a corresponding need for additional funding for consultation with immigration attorneys in such cases. Of course, accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

SIGNIFICANT ISSUES

Undocumented people are not more likely to commit crimes than U.S. citizens. A study out of Texas found “that undocumented immigrants have considerably lower crime rates than native-born citizens and legal immigrants across a range of criminal offenses, including violent, property, drug, and traffic crimes.” Michael T. Light, Jingying He, and Jason P. Robey,

Comparing crime rates between undocumented immigrants, legal immigrants, and native-born US citizens in Texas, (December 7, 2020) (available at <https://www.pnas.org/doi/10.1073/pnas.2014704117>).

This bill implicates questions about the scope of the Second Amendment and whether it applies to undocumented people. In *United States v. Portillo-Munoz*, 643 F.3d 437 (5th Cir. 2011), the Fifth Circuit held that undocumented persons do not have Second Amendment rights, as matter of first impression. Meanwhile, the Second Circuit held that undocumented persons with “substantial ties to the US” *do* have Second Amendment rights. *United States v. Meza-Rodriguez*, 798 F.3d 664 (7th Cir. 2015) (unauthorized noncitizen who had substantial ties to the United States can invoke Second Amendment rights, but the right to bear arms is not unlimited). There is sparse precedent nationwide and the U.S. Supreme Court has yet to address the question. Meanwhile, the New Mexico Constitution’s right to bear arms may well be read to provide greater protections to undocumented persons based on our border status and tri-cultural heritage.

In addition, it appears that persons who are in the country illegally are already generally barred from possessing firearms under federal law. *See e.g.*, Nate Trela, *No ATF did not change rules to allow ‘illegal’ immigrants to possess guns/fact check*, USA Today, Jan. 10, 2024, available at: <https://www.usatoday.com/story/news/factcheck/2024/01/10/federal-law-bars-those-unlawfully-in-us-from-having-guns-fact-check/72166253007/>. Federal law creates exceptions for certain categories of migrants, including allowing hunting licenses for some individuals here on nonimmigrant visas or for some “immigrant aliens” who meet particular criteria. *Id.* HB 168 does not address such distinctions, which could give rise to additional litigation.

Finally, because federal law already regulates such matters, is it unclear how useful a state provision would be. When Alabama passed its own regulation, individuals questioned if it was a wise use of state resources to prosecute and imprison such persons when the federal government already handles such cases. *See e.g.*, Ralph Chapoco, *Alabama bill would make it a state crime for undocumented immigrants to own guns. Federal law already prevents people in the country unlawfully from owning guns*, Alabama Reflector, March 13, 2023, available at: <https://alabamareflector.com/2023/03/13/alabama-bill-would-make-it-a-state-crime-for-undocumented-immigrants-to-own-guns/>.

PERFORMANCE IMPLICATIONS

Possession of a firearm cases often need to go to trial separately from any other charges, creating additional work for public defenders, prosecutors, and the courts. In addition, because of the individual’s immigration status and potential collateral consequences for the individual, consultation with immigration attorneys would be required in such cases. Immigration consultation services are separately funded for LOPD clients for contracting attorneys through “litigation services,” the increased need for which could cause additional strain on the criminal legal system.

ADMINISTRATIVE IMPLICATIONS

None known

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 46 (Felon in Possession of Firearm Remedy) and HB 198 (Felon in Possession of Firearm Penalty) would amend the same statute.

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, and while it appears a bill increasing criminal penalties for felon in possession offenses has received a message, analyst is unaware if this bill has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

None noted

ALTERNATIVES

None noted

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None known