

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:

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

Date Prepared: 01/23/24
Bill No: HB 168

Sponsor: Rep. J. Jones
Rep. S. Lord
Rep. A. Reeb

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

Short Title: NO FIREARMS FOR
UNDOCUMENTED
PERSONS

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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:
 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”) 168 would amend NMSA § 30-7-16 to add “undocumented persons” to the list of people whose gun rights are limited under NMSA 30-7-16.

Section 30-7-16 already limits gun rights for certain persons, including felons, those under an order of protection, and persons convicted of certain enumerated crimes. HB 168 would expand the class of prohibited persons to include “undocumented person[s]”.

HB 168 would also add a definition for “undocumented person” to the statute.

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

Banning a undocumented person from firearm access could raise questions of constitutionality under the Second Amendment. The issue is whether undocumented persons have Second Amendment rights. The Second Amendment provides that “the right of the people to keep and bear arms.” The disputed issue will be whether an undocumented person is included in the reference to “the people”.

One federal appellate court has concluded that undocumented persons are included in the constitutional term “people”, at least where the undocumented person has developed substantial connections to the US. *U.S. v. Meza-Rodriguez*, 798 F.3d 664 (U.S. Ct. App. 7th Cir. 2015). Other federal courts have concluded otherwise. *US v. Sitladeen*, 64 F.4th 978 (Ct. App. 8th Circuit 2023) (“until the Supreme Court ... determines otherwise, the law of our circuit is that unlawful aliens are not part of “the people” to whom the protections of the Second Amendment extend.”). Based on the conflicting precedents, there is a significant risk that the constitutionality of HB 68 could result in a constitutional challenge.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

No direct administrative implications to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship: HB 127 – AGE 21 FOR FIREARM PURCHASES

Relationship: HB 129 – FIREARM SALE WAITING PERIOD CRIMES

Relationship: HB 137 GAS-OPERATED SEMIAUTO FIREARMS EXCLUSION ACT

Relationship: HB 46 – FELON IN POSSESSION OF A FIREARM – HB 46 seeks to amend the same criminal statute, NMSA Section 30-7-16.

Relationship, Duplication, Conflict: HB 47 – UNLAWFUL FIREARMS WHILE TRAFFICKING – not the same issue, but there could be overlap / conflict between the bills.

Relationship, Conflict: HB 58 – NO BACKGROUND CHECKS FOR FIREARMS SALES

Relationship: HB 78 – PERMITLESS FIREARM CARRYING

Relationship: SB 69 – 14-DAY FIREARM SALE WAITING PERIOD

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None suggested.