

LFC Requester:	Ismael Torres
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**AGENCY BILL ANALYSIS
2019 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: Date 01/21/19
Original **Amendment** **Bill No:** SB 8
Correction **Substitute**

Sponsor: R.MARTINEZ & P. WIRTH **Agency Code:** 264
Short BACKGROUND CHECKS ON **Person Writing** RVAZQUEZ
Title: SALES OF A FIREARM & **Phone:** 5056708484 **Email** ROSANNACVAZQU

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
NONE	NONE		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	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

BILL SUMMARY

Synopsis:

SB 8 requires a background check for sale of a firearm. The important word is “sale” which is defined as a fee or other consideration. There are certain firearm sales that this bill does not apply to:

1. by or to a person who holds a valid federal firearm license pursuant to 18 U.S.C. Section 923(a)(1);
2. law enforcement agency;
3. between two law enforcement officers certified pursuant to law enforcement training act and authorized to carry a firearm.

Failure to comply with this bill is a misdemeanor, and each lack of compliance is a separate misdemeanor action.

The cost of a federal instant background check is minimal in comparison to the benefit, and seller’s can include the added cost in the sale price of the firearm. Currently if a person purchases a firearm from a federally licensed firearm dealer, background checks are required, but this is not a requirement imposed on non-federally licensed firearm’s dealers. NMSA Section 30-7-1 already criminalizes unlawful possession of a firearm, but it doesn’t appear to be a requirement on sales of firearms, unless it is an FFL licensed dealer. A background check presumes to keep firearms from being sold to persons not qualified or prohibited from possessing a firearm such as those persons with criminal and mental health history, dishonorable military discharges, unlawful immigration status or open warrants.

Instant background checks for the most part are instant but in some cases can take up to three days. The background check will provide the seller with a green light to sell the firearm. If after three days, the background check is not concluded then the FBI provides a “default proceed” to the seller. While it flows that if a background check demonstrates a person who should not possess a firearm, the bill does not state that a sale cannot be consummated. It solely limits language to the requirement of an instant federal background check.

FISCAL IMPLICATIONS

There does not appear to be any additional fiscal impact on AODA.

SIGNIFICANT ISSUES

It is important to note that the background checks are only as good as the information provided to the FBI and NCIC. Such information varies between agencies and can sometimes take time to upload.

Also it is important to note that on a sale from one person to another of a firearm, this bill applies, but the reality of application of this law in such instances is minimal. Perhaps advertisement or increasing of penalties would provide notice and a greater incentive to personal sale transactions.

AMENDMENT LANGUAGE: SECTION 1, PARAGRAPH A.

Unlawful sale of a firearm without a background check consists of the sale of a firearm without conducting a federal instant background check, and where the buyer is not qualified to purchase or possess a firearm... where the sale is made for a fee or other consideration.

PERFORMANCE IMPLICATIONS - NA

ADMINISTRATIVE IMPLICATIONS - NA

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP – NA

TECHNICAL ISSUES -NA

OTHER SUBSTANTIVE ISSUES - NA

ALTERNATIVES - NA

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There are currently no requirements to conduct a background check where the sale is not from an FFL licensed agency. This includes pawnshops and independent person to person sales. Without a background check requirement, persons ineligible to carry firearms are purchasing firearms. It is one more check in protecting the lives of innocent victims and ineligible persons will be less inclined to attempt a purchase of a firearm. The cost and time associated is minimal when balanced with the protections of potential innocent victims.

AMENDMENTS

Not at this time.