

<b>LFC Requester:</b>	<b>Eric Chenier</b>
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**AGENCY BILL ANALYSIS  
2013 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** 01/18/2013  
**Bill No:** HB114--305

**Sponsor:** Rep. Nora Espinoza                      **Reviewing**    Attorney General's Office  
**Short**        PROHIBIT ENFORCEMENT                      **Person Writing**        Trevor A. Rigler  
**Title:**        OF FEDERAL GUN LAWS                              **Phone:** 505-222-9013    **Email** trigler@nmag.gov

**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

**BILL SUMMARY**

Summary Synopsis:

HB 114, if enacted, would criminalize the enforcement of federal laws or regulations pertaining to firearms, firearm accessories, or ammunition if applied to circumstances involving a firearm, firearm accessory, or ammunition owned or manufactured and remaining within the borders of the State of New Mexico. The bill also provides definitions of relevant terms and phrases. Additionally, the bill would render as unenforceable any federal firearms law or rule banning specific firearms or accessories or requiring registration of same. Finally, the bill would permit the Attorney General to defend New Mexico residents prosecuted by the federal government for violations relating to the manufacture, sale, transfer or possession of a firearm or firearm accessory or of ammunition owned or manufactured and retained exclusively within the borders of the State of New Mexico.

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

This bill, if enacted, could result in an increase in criminal matters filed in courts of jurisdiction. It could also result in additional investigative tasks to be conducted by state and local law enforcement personnel.

**SIGNIFICANT LEGAL ISSUES**

The most likely obstacle to this bill is the doctrine of federal preemption, which can be characterized as a product of the United States Constitution’s Supremacy Clause (Art. VI) and its Commerce Clause (Art. I, Section 8). The federal government regulates most aspects of the manufacture and transfer of firearms, notwithstanding existing state laws regarding firearms. The federal government’s authority to so regulate is based on the notion that firearms are inexorably a part of interstate commerce. Federal authority to regulate firearms based on interstate commerce is not absolute - recent U.S. Supreme Court jurisprudence has signaled that the Commerce Clause may not always justify federal regulation of things and activities ostensibly in interstate commerce. However, this recent trend has not produced a clear precedent holding whether and/or under what circumstances the federal government can regulate firearms based solely on interstate commerce.

While the instant bill clearly limits its scope to firearms owned or manufactured with the state, it will be difficult to demonstrate that any firearm is truly a product solely of New Mexico origin. Mere ownership of a firearm previously in interstate commerce would constitute an even

more tenuous status to fend off federal regulation.

Numerous states have enacted similar laws. The version of the law enacted into law in the State of Montana (the nation's second) is presently being litigated before the United States Court of Appeals for the 9th Circuit. It is not believed that any other state with a similar law is presently litigating before any level of the federal courts.

#### **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

This bill, if enacted, could result in an increase in criminal matters filed in courts of jurisdiction. It could also result in additional investigative tasks to be conducted by state and local law enforcement personnel.

#### **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

None

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION**

HB77 – “FIREARMS TRANSFER ACT” (Miguel P. Garcia), which would impose requirements and limitations on the transfer of firearms in certain situations. These requirements and limitations appear to mirror federal law, which would basically de-federalize the most common firearm laws and regulations and enumerate them as state law. If both bills are passed into law, the effect of the instant bill could be gutted in that it directs its application to federal firearms laws and regulations only.

#### **TECHNICAL ISSUES OR DRAFTING ERROR**

None

#### **OTHER SUBSTANTIVE LEGAL ISSUES**

If enacted into law, this bill could create a “Catch-22” situation where a holder of a Federal Firearms License (FFL) would be faced with a choice of obeying state law while violating federal law and *vice versa*. State, local, and even federal law enforcement personnel would confront an equivalent Morton's fork.

#### **ALTERNATIVES TO ENACTING THIS BILL**

None

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

#### **AMENDMENTS NEEDED TO IMPROVE THIS BILL**

Remove the provision barring the application of federal laws and regulations to firearms, accessories, and ammunition that is merely “owned” in New Mexico, irrespective of the origins

of the item in question.

Remove criminal penalties.

Require some means of demonstrating that a firearm, firearm accessory, or ammunition is solely manufactured within the borders of the State of New Mexico.

Remove Section C as providing private legal representation to federal criminal defendants is not one of the duties enumerated in §8-5-2 NMSA.