

LFC Requester:	Marty Daly
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**AGENCY BILL ANALYSIS
2014 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 January 23, 2014
Bill No: HB44-305 Jan 24

Sponsor: Rep. Miguel Garcia **Reviewing** Attorney General's Office
Short **Person Writing** P. Cholla Khoury
Title: Firearm Transfer Act **Phone:** 827-7484 **Email** ckhoury@nmag.gov

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

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(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
FY14	FY15	FY16		

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(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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: The Firearm Transfer Act (the Act) puts a background check requirement on the transfer of firearms at gun shows. The Act requires that promoters/organizers of gun shows provide for a person or entity that can run background checks to be present at the gun show and it prohibits the transfer of firearms at that show unless the background check is run and passed. The Act makes it a misdemeanor to transfer or receive a firearm at a gun show without a background check or when the background check determines the recipient of the firearm is not qualified to receive the firearm. It also makes it a petty misdemeanor for the organizer of the gun show to fail to have background checks available. The Act also requires the Administrative Office of the Courts to report to the FBI’s national instant criminal background check system (NIC) any information that relates to a person’s eligibility to receive or possess a firearm under state or federal law. This Act creates an exception to IPRA with regard to information collected or maintained pursuant to this Act.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

N/A

SIGNIFICANT LEGAL ISSUES

Is this limitation on the purchase of a firearm constitutional under the Second Amendment to the United States Constitution and the New Mexico Constitution? Under *District of Columbia v. Heller*, the US Supreme Court noted that the protections of the Second Amendment do not “cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” 554 U.S. 570, 626–27, 128 S.Ct. 2783 (2008). If a state can prohibit certain classes of people from possessing firearms, then it follows that the State can run background checks to ensure the purchaser of a firearm is not among the prohibited classes. The Act, by requiring the background check prior to the transfer, merely ensures that the purchaser is among those not prohibited from carrying a firearm.

Is this Bill preempted by Federal law? This Bill is not federally preempted. There are three ways a state law may be preempted; through actual conflict with a federal law, through implied conflict with a federal law, or when Congress has “occupied the field” addressed in the law. *See Brown v. Hotel Employees*, 468 U.S. 491, 501, 104 S. Ct. 3179 (1984) (citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1147, 1152 (1947)), *Michigan Cannery & Freezers Ass’n, Inc. v. Agricultural Marketing and Bargaining Bd.*, 467 U.S. 461, 469, 105 S. Ct. 2518, 2523 (1984) (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95-96, 103 S. Ct. 2890, 2899-2900 (1983)). There appears to be no conflict, express or implied, with federal law. Rather, it appears that this legislation compliments federal law.

Does this law infringe on the right to privacy of gun show sponsors/organizers and attendees? Probably not. It is clear that the right of privacy is found among the various protections of the Constitution of the United States rather than in any specific provision. *See Paul v. Davis*, 424 U.S. 693, 712-13, 96 S.Ct. 1155, 1166 (1976). There has been no right to privacy extended to the Second Amendment and the right to bear arms. The Act does not require the gun shows or any other entity to keep a list, roster or register of attendees or firearms purchasers and is therefore unlikely to invade on any other protected conduct.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None for the Attorney General’s Office

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

The Act requires the Administrative Office of the Courts to transmit certain information that pertains to an individual’s ability to obtain and possess a firearm. This requirement adds the additional burden on the Courts to affirmatively transmit court records to NIC. It also requires the Courts to promulgate rules which allow an individual to challenge and correct the information transmitted by those courts.

However, in requiring the court to transmit the information, it also provides that no cause of action shall be brought for transmitting, failing to transmit, transmitting inaccurate information or delaying the transmission of information. While it does place a burden on the courts, it protects the courts and persons transmitting the information from liability regarding those actions.

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

TECHNICAL ISSUES OR DRAFTING ERROR

The definition of “gun show” as used in the Act could also include retail establishments. The definition of gun show, as used in the Act, is “an event at which more than twenty-five firearms are on site and available for transfer.” A retail establishment could meet this definition.

Page 4, line 13 in Section 4(B) of the Act refers to the subject of a background check being “prohibited from receiving a firearm” The Act fails to explain what result of the background check would prohibit the individual from receiving a firearm.

OTHER SUBSTANTIVE LEGAL ISSUES

None

ALTERNATIVES TO ENACTING THIS BILL

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The consequences of not enacting this Bill would be that firearms transfers at gun shows continue to take place without background checks on purchasers of those firearms.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

This Bill could benefit from more specificity as to what information the Administrative Office of the Courts should transmit to the NIC.