

LFC Requester:	Charlene Cerny
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{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 26 , 2015
Bill No: HB44

Sponsor: Rep. Miguel Garcia **Agency Code:** Attorney General's Office
Short Title: Firearm Transfer Act **Person Writing** Tony Long , AAG
Title: _____ **Phone:** 505/222-9020 **Email** tlong@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	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 Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: House Bill 44 is an act relating to firearm transfers.

Section 1 gives the act a title, the “Firearm Transfer Act”.

Section 2 summarizes the act, stating that a firearm shall not be transferred in a sale between two persons at a gun show without a background check, unless the transfer meets certain exceptions.

Section 3 defines federal firearm licensee, firearm, gun show, and transfer.

Section 4 subsection A states that a federal firearms licensee or the holder of a current and valid New Mexico concealed handgun license does not need a background check. In all other situations, a vendor at a gun show must conduct a federal firearm transfer background check. Section 4 subsection B states that if the background check reveals the transfer is prohibited, then the vendor and transferee shall be informed and there shall be no transfer. Section 4 subsection C states that the promotor or organizer of the gun show is responsible for prominently displaying the requirement of a background check and arranging for a federal firearms licensee or licensees to be on premises to run the background checks at a fee not to exceed \$25.00 per transfer.

Section 5 provides exceptions for background checks when the firearm is an antique or relic.

Section 6 allows for immunity from civil liability for the transferor or the federal firearms licensee unless they know or reasonably should know that the transferee is likely to commit an unlawful act with the firearm or the transferee is going to deliver the firearm to a prohibited third party.

Section 7 defines the crime of unlawfully transferring a firearm at a gun show as well as provides for the penalty, a misdemeanor.

Section 8 defines the crime of failing to arrange for a federal firearms licensee at a gun show and provides for the penalty, a petty misdemeanor.

Section 9 states that nothing in the act shall authorize the government to maintain a list or registry of firearm transfers. It also states that if there are any records that are kept because of the act, those records are not subject to the Inspection of Public Records Act.

Section 10 subsection A establishes that the Administrative Office of the Courts (AOC) shall obtain and transmit information on firearm possession to the Federal Bureau of Investigation

(FBI) national instant criminal background system. The AOC shall also be responsible for notifying the FBI of any updates, corrections, modifications, or removal of information relating to a person's firearm possession eligibility. Section 10 subsection B allows for the AOC to transmit to the FBI any information regarding a person that has been adjudicated a mental defective or committed to a mental institution subject to the disabilities of 18 USC 922(d)(4) and (g)(4). Section 10 subsection C states that upon court order, judgment or verdict the AOC shall only transmit enough information to the FBI for inclusion into the background check system. Section 10 subsection D states that once a person has been reported to the FBI as ineligible based on mental condition, they may petition the court for a de novo redetermination on restoration of firearms possession rights. That petition must be served on the Office of the Attorney General and all other parties. Section 10 subsection E states that after a hearing the court shall restore a person's right to possess a firearm unless they are dangerous or it would be contrary to public interest. Section 10 subsection F states that the court proceedings shall be on record, that record shall be sealed, they may appeal, and the appeal shall be on the record. Section 10 subsection G states that a person may appeal their restoration rights not more than once every 2 years and if they have been committed to a mental institution, not until they have been released. Section 10 subsection H states that the AOC shall notify the FBI about any court order of restoration. Section 10 subsection I states that information transmitted to the FBI regarding someone's mental condition is confidential and can only be released to that person or a representative and can only be used for the purpose of including them in the background check system. It also states that there is no cause of action for sending the wrong information. Section 10 subsection J authorizes the inspection of the report by the person or a representative. Section 10 subsection K puts the onus of rulemaking on the AOC in regards to the inspection and correction of information.

Section 11 repeals the act in the event that federal law requires background checks on all transfers of firearms that are not prohibited or federal law preempts the State from enforcing state law.

FISCAL IMPLICATIONS

As drafted, HB 44 requires a copy of the petition seeking redetermination of mental condition to be served on the Office of the Attorney General. As drafted, it is unclear what role, if any, the Office of the Attorney General would serve in the de novo hearing on the matter. If the role the Office of the Attorney General is supposed to serve requires personnel and resources, then additional funding will need to be allocated.

SIGNIFICANT ISSUES

In Section 4 subsection C, the qualifying language of "as reflected on promotional material or advertising for the gun show" might allow for numerous loopholes. The language as it currently drafted might be interpreted to not require an organization or multiple organizations or multiple people to comply with subsection C(1) and subsection C(2).

In Section 10 subsection F, the redetermination hearing is on the record and sealed. An appeal from that hearing is also on the record, but from the current language, the appeal does not appear to be sealed.

PERFORMANCE IMPLICATIONS

As drafted, HB 44 requires a copy of the petition seeking redetermination of mental condition to be served on the Office of the Attorney General. As drafted, it is unclear what role, if any, the

Office of the Attorney General would serve in the de novo hearing on the matter. If the role the Office of the Attorney General is supposed to serve requires personnel and resources, then additional funding will need to be allocated.

ADMINISTRATIVE IMPLICATIONS

As drafted, HB 44 requires a copy of the petition seeking redetermination of mental condition to be served on the Office of the Attorney General. As drafted, it is unclear what role, if any, the Office of the Attorney General would serve in the de novo hearing on the matter. If the role the Office of the Attorney General is supposed to serve requires personnel and resources, then additional funding will need to be allocated.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The bill as it is currently drafted in Section 10 may not provide enough guidance to a court in how to determine competency, dangerousness, burden of proof, and standard of review. NMSA §31-9-1 through §31-9-2 currently deals with mental illness and competency. The proposed act may want to link to the statutes dealing with mental health and competency.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A