

LFC Requester:	Elkins, Clint
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**AGENCY BILL ANALYSIS
2015 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 February 17, 2015
Bill No: SB 539

Sponsor: Sen. Sander Rue
Short Title: Uniform Securities Act Penalties

Agency Code: Attorney General's Office
Person Writing: Rebecca Parish, AAG
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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: Senate Bill 539 is an amendment of a section of the New Mexico Uniform Securities Act, NMSA 1978, §§ 58-13C-508, that would create harsher penalties for Securities Act violations involving any person over 60 years of age.

Section 58-13C-508 currently treats violations of the New Mexico Securities Act as either a third-degree or fourth-degree felony. SB 539 would make violations involving individuals over 60 years of age a second-degree felony, and would increase both the ceiling of a fine imposed for such a violation and the length of imprisonment to which a violator could be sentenced.

FISCAL IMPLICATIONS

None for this office.

SIGNIFICANT ISSUES

As drafted, the bill provides enhanced penalties for “an action involving a person over the age of sixty” (emphasis added). The word “involving” is potentially ambiguous, since that term may include a violation committed by a person over 60 years of age, in addition to a violation committed against a person over 60 years of age.

It is unclear why SB 539 considers individuals as young as their early 60s to be particularly vulnerable to securities violations, why the bill treats violations involving those individuals as more egregious than violations involving other groups which may be perceived as vulnerable (such as individuals who are disabled to illiterate), or why the bill employs the 60-year-old threshold for the penalty enhancement. New Mexico statutes frequently use different, typically higher, age cutoffs to designate older individuals. *See, e.g.*, NMSA 1978, § 27-4-2(C) (defining “aged person” under Special Medical Needs Act as a person who is 65 years old or older who meets certain other criteria); *id.* § 7-2-18.13 (providing income tax credit for certain individuals 65 years old or older); *id.* § 17-3-2(E, G) (establishing special categories of fishing and hunting licenses for individuals 65 years or older); *id.* § 27-2-12.11 (prescription drug waiver program open to low-income individuals 65 years of age or older); *but see id.*, § 31-18B-2(A) (defining “age” under Hate Crimes Act to mean “sixty years of age or older”).

PERFORMANCE IMPLICATIONS

None for this office.

ADMINISTRATIVE IMPLICATIONS

None for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 541 would amend the New Mexico Uniform Securities Act to prohibit intentionally making any materially false, fictitious or fraudulent statement or representation to law enforcement officers of “the division” (i.e. the Securities Division of the Regulation and Licensing Department). SB 540 would prohibit persons from “corruptly” obstructing audits or inspections conducted under the New Mexico Uniform Securities Act.

TECHNICAL ISSUES

See discussion above.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

N/A