

LFC Requester:	Clint Elkins
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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 19, 2015
Bill No: SB 540-305

Sponsor: Sen. Sander Rue
Short Title: Uniform Securities Act
"Corruptly" Definition

Agency Code: Attorney General's Office
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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: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

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:

SB 540 would amend the New Mexico Uniform Securities Act, NMSA 1978, Sections 58-13C-101 through -701, to add a definition for “Corruptly.” Subsection D of Section 1 defines corruptly as “acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering or destroying a document or other information.”

The bill also would add language to make it unlawful for any person to “corruptly” obstruct any inspection or audit conducted by the Director of the Securities Division of the Regulation and Licensing Department pursuant to the Director’s authority under NMSA 1978, Section 58-12C-411(D). Pursuant to NMSA 1978, Section 58-13C-508, “a person who willfully violates any provision of the New Mexico Uniform Securities Act . . . is guilty of a fourth degree felony[.]”

FISCAL IMPLICATIONS

None for this office.

LEGAL ISSUES:

Some of the terms used in SB 540 may require further consideration. First, the term “improper purpose” could be construed as too vague because it is unclear what the term means beyond the limited illustrative examples offered (e.g. “making a false or misleading statement,” “withholding, concealing, altering or destroying a document or other information”).

Second, with respect to the bill’s use of the term “influencing another,” it is not clear if the influence would require threat, coercion, conspiracy or some other active wrongdoing, and it is not clear to what extent the bill would impose vicarious liability for essentially passive acts.

Third, the use of the term “corruptly” in the provision prohibiting obstruction of audits appears to create a new category of *mens rea*, i.e. mental state of the person committing the prohibited act. It is unclear from SB 540 precisely how this new term, which does not otherwise appear in the New Mexico Uniform Securities Act, differs from *mens rea* specified in other provisions of the

Act, such as acts committed “willfully” or “knowingly.” *See United States v. Williamson*, 2013 WL 1658021 at *17-19 (D.N.M. Mar. 20, 2013) (comparing “corruptly,” “knowingly,” and “willfully”). The Legislature should consider whether it wishes to provide a separate category of *mens rea* for the specific act of obstructing an audit, as opposed to the other acts prohibited by the New Mexico Uniform Securities Act.

PERFORMANCE IMPLICATIONS

None for this office.

ADMINISTRATIVE IMPLICATIONS

None for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 539 would enhance penalties for New Mexico Uniform Securities Act violations involving individuals over 60 years of age. 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).

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A