

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 541

Sponsor: Sen. Sander Rue **Agency Code:** Attorney General's Office
Short Uniform Securities Act False **Person Writing** Rebecca Parish, AAG
Title: Statements **Phone:** 505-827-6777 **Email** rparish@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: Senate Bill 541 would 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, *see* NMSA 1978, § 58-13C-102(F)). That provision, in principle if not in exact phrasing, has been incorporated into the laws of at least several other states. *See, e.g.,* Cal. Corp. Code § 25166 (“It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice, or report filed with the commissioner...”).

SB 541 defines a “materially” false statement as one that has a natural tendency to influence, or is capable of influencing, a decision of the director of the Securities Division (see NMSA 1978, § 58-13C-102(E)). That definition appears to track false claims statutes from other jurisdictions. *See, e.g.,* 740 ILCS 175/3(b)(4) (Illinois False Claims Act) (“The term ‘material’ means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.”).

FISCAL IMPLICATIONS

None for this office.

SIGNIFICANT ISSUES

Under NMSA 1978, § 58-13C-501, it is already unlawful for a person “in connection with the offer, sale or purchase of a security, directly or indirectly,” to, among other conduct, “make an untrue statement of a material fact or to omit to state” a necessary material fact. Although SB 541 could apply to false statements that are made to the Securities Division but that are not “in connection with the offer, sale or purchase of a security, directly or indirectly,” it is unclear why the bill has been introduced as a freestanding section rather than as an amendment to Section 58-13C-501. Possible overlap/duplication of that statutory section with SB 541 should be explored further.

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 540 would prohibit persons from “corruptly” obstructing audits or inspections conducted under the New Mexico Uniform Securities Act.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

N/A