

pLFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto: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** Jan 6, 2016

**Bill No:** HB-51

**Sponsor:** Miguel Garcia

**Agency Code:** 264

**Short**    Firearm Transfer Act

**Person Writing**    Gary Cade

**Title:** \_\_\_\_\_

**Phone:** 505-507-7752

**Email** \_\_\_\_\_

**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)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB 51 is identical to HB 44 that was introduced in 2015. It would require background checks for anyone receiving a firearm at a gun show. The background checks would be conducted by a federal firearms licensee, at least one of which would be required to be on the premises of the gun show and who could, if desired, charge a fee of up to \$25.00 for each background check. The bill defines “gun show” as “an event at which more than 25 firearms are on-site and available for transfer.” “Transfer” means the “sale, lease, delivery or other passing of possession or control of a firearm.” Background checks would not be required for transfer or an “antique or relic firearm,” i.e., manufactured before 1898 or a replica of those weapons, or a muzzle loading rifle, shotgun or pistol designed to use black powder or a black powder substitute. Persons who transferred or received a firearm, or attempted to transfer or receive a firearm without a background check, would be guilty of a misdemeanor. Persons who transferred or received a firearm, or attempted to receive a firearm, after the background check revealed that the person receiving the firearm was prohibited from receiving a firearm would also be guilty of a misdemeanor. A gun show promoter who failed to arrange for a federal firearms licensee to be on the premises of a gun show or failed to post signage regarding that would be guilty of a petty misdemeanor.

HB 51 would not require government officials or agencies to compile or maintain a list of firearms transfers or gun owners. Any firearms transfer records could be disclosed for a criminal investigation but would be exempt disclosure under the Inspection of Public Records Act (“IPRA”).

HB 51 would require the administrative office of the courts (“AOC”) to obtain and transmit information from court proceedings to the FBI for inclusion in the national instant criminal background check system “relating to eligibility to receive or possess a firearm pursuant to state or federal law.” AOC would be specifically directed to report information regarding any person “adjudicated as a mental defective or committed to a mental institution...” Any person in those categories could petition the court that originated the order, judgment or verdict reported to the FBI for a redetermination regarding their right to receive or possess a firearm. The proceedings would be *de novo* with a record required to be kept but the record would be

sealed and disclosed only to the parties and a court if there was an appeal.

HB 51 also contains a contingent repeal provision. All of its provisions would be repealed upon the effective date of a federal law requiring a background check for a transfer of a firearm (other than a short barrel shotgun or rifle or machine gun) between two persons who are not federal firearms licensees and who reside in the same state, regardless of whether the transfer takes place at a gun show or elsewhere. It would also be repealed if there were a federal law that “expressly preempts” the state from enforcing the operative provisions of the Firearms Transfer Act.

## **FISCAL IMPLICATIONS**

HB 51 may have a fiscal impact on the AOC because of the reporting requirements regarding eligibility to possess or receive a firearm. In addition to the requirements regarding someone adjudicated as a mental defective or committed to a mental institution, federal law has additional conditions prohibiting gun possession or ownership, including--but not limited to--being a convicted felon or someone convicted of domestic violence. (See, 18 U.S.C. 922(g)). It may also have a fiscal impact on the courts, the attorney general’s office and local prosecutors who may get involved in proceedings filed by someone adjudicated a mental defective or committed to a mental institution who petitions for restoration of their rights to receive or possess a firearm.

## **SIGNIFICANT ISSUES**

HB 51 would prohibit transfers at a gun show by a vendor at a gun show unless the recipient is a federal firearms licensee or holds a current, valid concealed handgun (carry?) license, or the transfer is conducted “through the services of a federal firearms licensee.” Unless someone holds a federal firearms license or a current and valid concealed carry permit, the transfer cannot take place until the background check is conducted and the required paperwork completed. It can take up to three days for the background check to be completed and results received. The bill states that if the check reveals that the transferee is prohibited from receiving a firearm the transfer shall not take place. It is not clear what can take place in the interim, i.e. can funds be exchanged, or can a firearms transfer take place, albeit subject to rescission if the recipient is found to be prohibited from gun possession or ownership? A vendor might reasonably argue they had a background check done as required and had no indication when it was commenced that the prospective recipient would not be allowed to possess or receive a firearm. Some vendors could also make a connection at a gun show with a prospective purchaser and conduct their transactions in another place or time instead of going through the process to obtain a federal firearms transfer background check. The Act would only apply to a gun show, defined as an event in which more than 25 firearms are on site and available for transfer, so “private” events like street corner sales and other potential affairs with 25 or fewer firearms available would not be covered. The criminal violations listed are all misdemeanors or petty misdemeanors that carry relatively light punishments, with no increase in punishment, regardless of the number or violations and whether it is a first offense or subsequent offense(s). The only inhibition against selling or transferring a firearm to a “straw man” purchaser acting to obtain a gun for someone who is ineligible to receive or possess a firearm is presumptive immunity from civil liability unless the transferor knew or had reason to know the firearm was going to wind up with an ineligible person.

HB 51 uses the term “mental defective” and refers to certain federal statutes that use that term in relation to eligibility to possess or receive a firearm. However, it is unclear whether someone who is not mentally competent to stand trial (See, Sec. 31-9-1, et seq., NMSA) would be considered a “mental defective” who must be reported to the national criminal background check system. That could affect which court hears and decides a petition for redetermination of eligibility since both district court and metropolitan court can find someone mentally incompetent to stand trial. The bill is also unclear on the procedure stating only that “A copy of the petition (seeking a redetermination of the person’s mental condition for the purpose of restoring the person’s right to receive or possess any firearm or ammunition) shall be served upon the office of the attorney general and upon all parties to the proceeding resulting in a court order, judgment or verdict” that the person is a mental defective or committed to a mental institution. Among other things, it is not specified if the other parties will be entitled to participate in the hearing—and if so, in what manner. It is unclear if the local prosecutor and/or victims or persons acting on behalf of victims be included as “parties.” The bill also does not indicate whether the hearing would be public (the record would be sealed unless the decision is appealed by the petitioner), or even what the standard of proof should be. The only guidance specified is a requirement for a finding by the court, “that the person will not be likely to act in a manner dangerous to public safety,” and restoration of their firearm possession rights “is not contrary to the public interest.” Although the petitioner can appeal the court’s decision for restoration of their right to receive or possess a firearm or ammunition, there is no similar appeal provision for the attorney general or the other parties entitled to notice.

HB 51 provides for repeal if a federal law is passed requiring a background check for transfer of a firearm (except sawed-off shotgun, machine gun, etc.) if the two persons involved are not federal firearms licensees and reside in the same state. That means the entire law could be repealed but leave firearms transactions without background checks for persons who do not reside in the same state. It seems likely persons would cross state lines to participate in gun shows and they would not be required to get a background check of their prospective purchasers before transferring any firearm(s).

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On January 4, 2016 President Obama announced a series of executive actions aimed at reducing gun violence. The White House Fact Sheet states that the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) has clarified that a person engaged in the business of dealing in firearms must be licensed as a federal firearms dealer, even if they only conduct business through the internet or at gun shows, just like a dealer whose business is run out of a traditional brick-and-mortar store. The Fact Sheet noted that quantity and frequency of sales are relevant indicators but there is no specific threshold number of firearms purchased or sold that triggers the licensing requirements. They noted that courts have upheld convictions for dealing without a license when as few as two firearms were sold or when only one or two transactions took place, when other factors are present. The federal statute states that “...dealer means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or making or fitting special barrels, stocks or trigger mechanisms, or (C) any person who is a pawnbroker.” [See, 18 U.S.C. 921(a)(11)]

The White House also announced that ATF is finalizing a rule that makes clear persons will no longer be able to avoid background checks by buying guns and other items through a trust or corporation. The announcement stated that in 2015 the National Instant Criminal Background Check System (“NICS”) processed more than 22.2 million background checks and, by law, a gun dealer can complete a sale to a customer if the background checks comes back clean or has taken more than three days to complete. The FBI is planning to hire more than 230 additional NICS examiners and other staff members to assist with processing mandatory background checks and will utilize new digital technology to process background checks 24 hours a day, seven days a week.

The White House also reported that less than half the persons with diagnosable mental health problems receive the treatment they need and proposed a new \$500 million investment to aid them. They also reported the Social Security Administration will, with the Department of Justice, issue rules regarding approximately 75,000 people each year who have documented mental health issues and receive disability benefits because of their mental impairment, or have been found by a state or federal court to be legally incompetent.

The President’s announcement has been criticized by opponents as illegal but if there is a court challenge determining that could take a very long time. In the meantime, as presented, the announcement would not seem to trigger the contingent repeal provision of HB-51.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**