

LFC Requester:	Davidson, Austin
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 1/21/24
Bill No: HB 114

Sponsor: Rep. Christine Chandler
Short Title: Firearm Industry Accountability Act

Agency Name and Code AOC 218
Number: _____
Person Writing Kathleen Sabo
Phone: 505-470-3214 **Email** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 114 enacts the “Firearm Industry Accountability Act” (FIAA) to provide the following:

- That it is unlawful for a firearm industry member to falsely advertise a firearm product (Section 3);
- That it is unlawful for a firearm industry member to use unconscionable trade practices or unfair or deceptive trade practices (Section 4);
- Prohibits a firearm industry member from knowingly or recklessly creating, maintaining or contributing to anything affecting any number of citizens that could negatively impact public health, safety or welfare through the sale, manufacturing, making, importing, advertising or marketing of a firearm product (Section 5);
- Requires a firearm industry member to establish and implement reasonable controls and procedures regarding the sale, manufacturing, making, importing, distribution, use, advertising and marketing of a firearm product to prevent and insure specified actions (Section 6);
- Permits the Attorney General (AG) or a District Attorney (DA) to bring an action for civil penalties in the name of the state alleging violations of the provisions of the FIAA in district court whenever the AG or DA has reasonable belief that a firearm industry member has violated the FIAA or is using, has used or is about to use any method, act or practice that is declared to be unlawful by the FIAA (Section 7);
- Provides that the AG or DA, acting on behalf of the State of NM, shall not be required to post bond when seeking a temporary or permanent injunction (Section 7);
- Permits the AG or DA to petition the district court for temporary or permanent injunctive relief or restitution (Section 7);
- Provides that a firearm industry member who engages in false advertising in violation of Section 3 of the FIAA shall be liable for a civil penalty of not more than \$1,000 for each violation, inuring to the state and permitted to be recovered in a civil action brought by the AG or the DA of the district where the violation occurred (Section 7);
- Provides that. in an action brought under the FIAA, Section 7, if the court finds that the firearm industry member is willfully using or has willfully used a method, act or practice declared unlawful by the FIAA, the AG or DA, upon petition to the court, may recover on behalf of the state a civil penalty of not more than \$5,000 for each violation (Section 7);
- Permits a person likely to be harmed or damaged by a violation of the FIAA to

- request equitable relief from a court of competent jurisdiction, with proof of monetary damage, loss of profits or intent to damage, deceive or take unfair advantage of a person not required (Section 8);
- Permits a person who is actually harmed as a result of a violation of the FIAA to bring an action to recover damages, and permits the court to award punitive, equitable or compensatory damages, including damages for pain and suffering (Section 8);
 - Requires a court to award attorney fees and costs to the party complaining of a violation of the FIAA if the party prevails and provides that the relief provided for under the FIAA is in addition to remedies otherwise available against the same conduct under federal and state law (Section 8);
 - Provides that in a class action filed under the FIAA, the court may award damages to the named plaintiffs and members of the class as provided in Section 8(B) (Section 8); and
 - Provides that to prevail in an action under the FIAA, the party complaining of a violation is not required to demonstrate the intent to cause any harm or damage, unless otherwise required by the FIAA.

HB 114, Section 2 defines “firearm industry member” to mean a person engaged in the sale, manufacturing, making, importing, distribution, advertising or marketing of a firearm product. HB 114 also defines “false advertising”, “firearm”, “firearm product”, “unconscionable trade practice” and “unfair or deceptive trade practice”.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and resulting actions for civil penalties, equitable relief, punitive equitable or compensatory damages, restitution, and petitions temporary or permanent injunctions, as well as challenges to the new law’s constitutionality. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) In 2022, California enacted the Firearm Industry Responsibility Act, effective July 1, 2023, a substantially similar Act to HB 114’s Firearm Industry Accountability Act. (See <https://giffords.org/lawcenter/state-laws/gun-industry-immunity-in-california/> for a detailed discussion of the California Act.) In June of 2023, Illinois enacted its version of the Firearm Industry Responsibility Act. (See HB 218 at <https://ilga.gov/legislation/fulltext.asp?DocName=&SessionId=112&GA=103&DocTypeId=HB&DocNum=218&GAID=17&LegID=142050&SpecSess=&Session=> . See also Washington State’s SB 5078 at <https://app.leg.wa.gov/billsummary?BillNumber=5078&Initiative=false&Year=2023> .)

In August of 2023, the National Shooting Sports Foundation filed a federal lawsuit challenging the Illinois law as a violation of the First Amendment right to free speech, the Second Amendment right to bear arms, and the 14th Amendment guarantee of due process. According to ABC’s Eyewitness News, the suit also claims that the law imposes liability in Illinois for actions committed by other individuals or in other states. And it argues that the state law is preempted by a federal law called the Protection of Lawful Commerce in Arms Act, and that Illinois law explicitly authorizes people to sue gun

dealers and manufacturers for damages caused by a third party's misuse of a firearm, something PLCAA specifically prohibits, which claim is disputed. See Gun industry group challenges new firearms marketing restrictions in Illinois, Hancock, August 15, 2023 at <https://abc7chicago.com/illinois-gun-laws-law-jb-pritzker-governor/13653092/>)

The Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. Sections 7901-7903, passed in 2005, protects firearms manufacturers and dealers from being held liable when crimes have been committed with their products. Under the PLCAA, arms manufacturers and dealers can still be held liable for damages resulting from defective products, breach of contract, criminal misconduct, and other actions for which they are directly responsible.

It can be anticipated that challenges to the constitutionality of the provisions of HB 114's FIAA will also be made in New Mexico.

- 2) New Mexico's Unfair Practices Act, Section 57-12-1 NMSA 1978 et. seq., provides for private remedies (Section 57-12-10), a civil penalty of \$5,000 per violation, recoverable by the AG (Section 57-12-11 NMSA 1978) and a civil investigative demand (Section 57-12-12 NMSA 1978).

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See "Fiscal Implications," above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

- 1) HB 114 does not define "ammunition", "firearm accessory" and "reasonable controls" as used in the FIAA.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

- 1) Define "ammunition", "firearm accessory" and "reasonable controls".