

LFC Requester:	
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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 X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 01/16/2024

Bill No: HB 114

Sponsor: Christine Chandler

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: Firearm Industry
Accountability Act

Person Writing Analysis: Felipe Guevara
Phone: 505-537-7676
Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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						

(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 Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

House Bill (HB) 114 makes various actions related to firearms unlawful, while also establishing a process by which these laws will be enforced, including available remedies, defining various terms and phrases, and mandating certain controls and procedures regarding the sale, manufacturing, making, importing, distribution, use, advertising, and marketing of a firearm product.

Unlawful Behavior:

- Section 3 makes it unlawful for a “firearm industry member to falsely advertise a firearm product.”
- Section 4 states that it is unlawful for a “firearm industry member to use unconscionable trade practices or unfair or deceptive trade practices.”
- Section 5 states that a “firearm industry member may not knowingly or recklessly create, maintain or contribute 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.”

Mandated “Controls and Procedures” Re: Firearms:

- Section 6 mandates that “firearm industry members” (i.e., member(s)) establish and implement reasonable controls and procedures related to various activities associated with firearms, including the sale and advertising of them, to:
 - Prevent the lost or theft of a firearm product from a member;
 - Ensure that all federal and state laws are followed by the member, and that the member does not promote unlawful behavior related to a firearm product;
 - Ensure that a member does not engage in any activity or practice that is unlawful pursuant to state and federal law;
 - Prevent the unlawful or fraudulent sale or distribution of a firearm product to a person who: (1) conceals that the purchase is for a third party, (2) intends to acquire or transfer the firearm product for purposes of unlawful commerce, (3) is prohibited from owning a firearm product, (4) and who a member believes is at risk of using a

firearm product to harm the person's self or to unlawfully harm another person.

Enforcement Actions and Remedies (State & Private):

- The Attorney General may enforce the provisions of the Act whenever they reasonably believe that a firearm industry member has violated the provisions of the Act or is using, has used or is about to use any method, act, or practice that is declared unlawful under the Act.
- The District Attorney is afforded the same powers given to the Attorney General to enforce this Act.
- Any Firearm Industry Member who violates Section 3 of the Act, i.e., false advertising, may be liable for a civil penalty of no more than \$1000 for each violation.
- When the Court finds that a Firearm Industry Member's violation of any provision within the Act was willful, the civil penalty may be up to \$5,000 per violation.
- A person likely to be harmed or damaged by a violation of the Firearm Industry Accountability Act may request equitable relief from a court of competent jurisdiction.
- A person who is actually harmed as a result of a violation of the Firearm Industry Accountability Act may bring an action to recover damages.

FISCAL IMPLICATIONS

See below.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Duplication Issues: Unlawful Behavior

Section 3 of HB 114 makes it unlawful for a firearm industry member to falsely advertise a firearm product. The definition of "False advertising" under HB114 mirrors the definition in the False Advertising Act (FAA), i.e., NMSA 57-15-1 & 2, where it is also unlawful to falsely advertise in the conduct of any business, trade, or commerce or in the furnishing of any service. Because the definitions for "false advertising" are very similar and deal with the same type of behavior, New Mexico's courts could use caselaw under the FAA to interpret "false advertising" under HB 114.

Similarly, Section 4 of HB 114 makes it unlawful for a "firearm industry member to use unconscionable trade practices." Under HB 114, the definition of "unconscionable trade practice" mirrors the definition in the Unfair Trade Practice Act (UPA), i.e., NMSA 57-12-2 & 3, where it is also unlawful for anyone in the conduct of any trade or practice to engage in a "unconscionable trade practice." While these definitions differ a bit more than those in Section 3, they are essentially the same and thus create the possibility of New Mexico courts using UPA caselaw to interpret HB 114.

Section 4 also makes it unlawful for a firearm industry member to "engage in unfair or deceptive trade practices." HB 114's definition of "unfair or deceptive trade practices" mirrors the UPA,

i.e., NMSA 57-12-2 & 3, it is also unlawful to engage in “unfair or deceptive trade practices,” which is defined as an “a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person.” Again, because of the similarities between the definitions and behavior involved, it is possible that New Mexico courts could use UPA caselaw to interpret this definition in HB 114. Furthermore, UPA sets out many examples of what would constitute an unfair or deceptive trade practice while HB 114 does not.

Furthermore, when any of the behavior in these definitions occurs, it is unclear whether the FAA, UPA, HB 114, or all these laws would apply. As the laws are currently written, a firearm industry member could be liable under the FAA, UPA, and HB 114 for the same behavior, as all laws deal with either false advertising, unconscionable trade practices, and/or unfair and deceptive behavior and neither the FAA nor UPA exclude firearms from their definition of products that these acts apply to in New Mexico.

Duplication and Conflict Issues: Penalties

The civil penalties provisions in the UPA, FAA, and HB 114 are either very similar in nature if not identical, or they conflict with one another. For instance, UPA and HB 114 each provide for a civil penalty of no more than \$5,000 for willful unlawful behavior. *See* Section 7.E of HB 114 and NMSA 57-12-11. Given that the UPA and HB 114 essentially outlaw the same behavior (as discussed above), it is unclear whether enforcers could seek both penalties or just one of these penalties. On the other hand, the FAA only provides for a maximum penalty of \$500 for similar behavior as the other two penalty provisions discussed above. As mentioned, because these penalties apply to similar unlawful behavior, it is unclear whether enforcers could request all three penalties, just one, or combination of three.

Enforcement Issues: CIDs and Coordination

Currently, HB 114 does not have a section that details the Attorney General and/or the District Attorney investigatory authority, similar to the UPA or FAA.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

See above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See above.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

Section 5 of HB 114 is broad and arguably ambiguous. This section could be used to prohibit the sale of certain firearm products to the public in general, which would likely invite challenges against the law and possibly cost the state resources and funds.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Much of the unlawful behavior described in HB 114 is already set out in UPA and FAA. What is not prohibited by these existing laws would obviously not go into effect and the status quo would continue.

AMENDMENTS