

LFC Requester:	Daly, Marty
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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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 1/30/24

Bill No: HB 114sub a

Sponsor: Rep. Christine Chandler **Agency Name and Code** AOC
Short Title: Firearm Industry Accountability Act **Number:** 218
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: Related to HB 46, HB 47, HB 58, HB 78, HB 127, HB 129, HB 137, HB 168, HB 183, HB 198, HM 27, SB 5, SB 69, SB 97 SB 204 and SJR 12, also dealing with firearms.

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The House Consumer and Public Affairs Committee (HCPAC) Substitute for HB 114, as amended by the House Judiciary Committee (HJC), enacts the “Firearm Industry Accountability Act” (FIAA), to require 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:

- A. Prevent the loss or theft of a firearm product from a firearm industry member;
- B. Ensure that a firearm industry member complies with the provisions of federal and state laws and does not promote the unlawful sale, manufacturing, making, importing, distribution, use, advertising or marketing of a firearm product; and
- C. Prevent the unlawful or fraudulent sale or distribution of a firearm product to the following persons who:
 - (1) Conceal or intend to conceal that the purchase of a firearm product is being made on behalf of a third party, as specified;
 - (2) Acquires or transfers or who attempts to acquire or transfer a firearm product for purposes of unlawful commerce;
 - (3) Is prohibited from possessing a firearm under federal or state law; or
 - (4) A firearm industry member has reasonable cause to believe is at risk of using a firearm product to cause imminent harm to the person’s self or others.

The HCPAC substitute for HB 114, as amended, provides that it is a public nuisance for a firearm industry member to knowingly or recklessly fail to exercise reasonable controls and procedures regarding the sale, manufacturing, making, importing, distribution, use, advertising and marketing of a firearm product. The substitute bill, as amended, permits a civil action to be brought as follows:

- The Attorney General (AG) or a District Attorney (DA) may bring a civil action to abate the public nuisance, for which the court may abate the nuisance and also award a civil penalty to the state of up to \$5,000 for each violation.
- A private citizen may bring a civil action to abate a public nuisance, and may also bring a civil action to recover actual or punitive damages against a firearm industry member as a result of a failure to exercise reasonable controls and procedures regarding the sale, manufacturing, making, importing, distribution, use, advertising

and marketing of a firearm product, for which the court the is required to award costs and reasonable attorney fees to a private citizen who establishes a violation.

The HCPAC Substitute for HB 114, as amended provides that the relief provided in Section 4 is in addition to remedies otherwise available against the same conduct under federal and state law. The amended substitute bill also provides that specified documentary material relating to the establishment and implementation of reasonable controls and procedures in the possession of a firearm industry member is required to be made available for inspection upon written demand of the AG or a DA.

The HCPAC Substitute for HB 114 defines “firearm industry member” to mean a person engaged in the sale, manufacturing, making, importing, distribution, advertising or marketing of a firearm product. “Firearm” and “firearm product” are also defined.

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, actual and punitive damages (including costs and reasonable attorney fees) 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) The House Judiciary Committee (HJC) amendment to the HCPAC Substitute for HB 114 defines “firearm industry member” to mean a person engaged in the sale, manufacturing, making, importing or distribution of a firearm product, removing the words “advertising or marketing” from the definition. The definition of “firearm industry member” in the original HB 114 included those engaged in the advertising or marketing of a firearm product. This amendment appears to reflect the removal of those sections in the original HB 114 making it unlawful for a firearm industry member to falsely advertise and/or use unconscionable trade practices or unfair or deceptive trade practices. (See “Significant Issue” #2, below.) Yet, the language concerning “use, advertising and marketing” continues to appear throughout the substitute bill, in Sections 3(A) and (B) and 4(A), (C) and (E). One might question, for example, how the substitute bill’s Section 3 can require a firearm industry member to establish and implement reasonable controls and procedures regarding the “...advertising and marketing of a firearm product...” when the definition of “firearm industry member” no longer means a person engaged in the advertising or marketing of a firearm product. Perhaps the retention of the “advertising or marketing” language throughout the substitute bill is intentional, but it may be accidental and unintended.

2) The HCPAC Substitute for HB 114, as amended, appears to limit the remedies available for a violation of the FIAA, as it removes language making it unlawful for a firearm industry member to falsely advertise and/or use unconscionable trade practices or unfair or deceptive trade practices, seemingly removing private remedies under New Mexico’s Unfair Practices Act, Section 57-12-1 NMSA 1978 et. seq., providing 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).

Additionally, under the original HB 114, Section 8, a person who is likely to be harmed

or damaged by a violation of the FIAA is permitted 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. This permission does not appear in the substitute bill, as amended. (See the original HB 114, Section 8, vs. the substitute bill's Section 4.)

2) In 2022, California enacted the Firearm Industry Responsibility Act, effective July 1, 2023, a substantially similar Act to the original 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.

Although the HCPAC Substitute for HB 114, as amended, rewrites the FIAA significantly, it can still be anticipated that challenges to the constitutionality of the provisions of the substitute's FIAA will also be made in New Mexico.

3) The HCPAC Substitute for HB 114, as amended, removes the language in the original HB 114, Section 5, prohibiting 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.

Additionally, the substitute bill removes the language in the original HB 114, Section 6(C), requiring 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:

C. ensure that a firearm industry member does not engage in any act or practice in violation of federal or state law that is applicable to the sale, manufacturing, making, importing, distribution, use, advertising or marketing of a firearm product.

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

Related to HB 46, HB 47, HB 58, HB 78, HB 127, HB 129, HB 137, HB 168, HB 183, HB 198, HM 27, SB 5, SB 69, SB 97 SB 204 and SJR 12, also dealing with firearms.

TECHNICAL ISSUES

- 1) The page 2, line 3 HJC amendment to the substitute bill appears to rewrite “...engaged in the sale, manufacturing, making, importing, distribution, advertising or marketing of a firearm product” as “engaged in the sale, manufacturing, making, importing or distribution of a firearm product”. The original language of the substitute bill, however, is not amended to remove “advertising or marketing” (nor, for that matter, “use”) in Sections 3(A) and (B) and 4(A), (C) and (E). It is unclear if this intended or accidental, given the HJC amendment of the definition of “firearm industry member” removing the words “advertising or marketing” from the definition.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

- 1) See “Technical Issues” #1, above.
- 2) Provide definitions for “ammunition,” “firearm accessory” and “reasonable controls.”