

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>HCPAC</u>	LAST UPDATED _____
	ORIGINAL DATE <u>1/30/24</u>
SHORT TITLE <u>Firearm Industry Accountability Act</u>	BILL NUMBER <u>CS/House Bill 114/HCPACS/aHJC</u>
	ANALYST <u>Daly</u>

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
Civil Penalties	Indeterminate but minimally positive	Recurring	General Fund				

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMAG		At least \$450.0		At least \$450.0	Nonrecurring	General Fund
DPS		\$5.5		\$5.5	Nonrecurring	General Fund
Total		At least \$455.5		At least \$455.5	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis on Original Bill Received From
New Mexico Attorney General (NMAG)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment to CS/House Bil 114

The House Judiciary Committee amendment to CS/House Bill 114 removes the phrase “advertising or marketing” from the definition of “firearm industry member.”

It should be noted that that phrase continues to appear on page 2 at lines 18 and 24, page 3 at line 23, and page 4 at line 22.

Synopsis of HCPAC Substitute for House Bill 114

The House Consumer and Public Affairs Committee Substitute for House Bill 114 enacts the Firearm Industry Accountability Act. This act governs firearm industry members, meaning every person involved in the sale, manufacturing, making, importing, or distribution, of a firearm product. CS/HB114 makes it unlawful for any firearm industry member to establish and implement reasonable control and procedures to:

- Prevent the loss or theft of a firearm;
- Ensure compliance with all federal and state law and not promote the unlawful sale, manufacturing, making, importing, distribution, use, advertising or marketing of a firearm product; and
- Prevent the unlawful or fraudulent sale or distribution of a firearm to a person who:
 - 1) conceals or intends to conceal a purchase made on behalf of a third party, including purchases made in exchange for services or something of value but not including a bona fide gift to another who is not prohibited from owning a firearm;
 - 2) acquires or transfers or attempts to acquire or transfer for purposes of unlawful commerce;
 - 3) is prohibited from possessing a firearm under state or federal law; or
 - 4) an industry member has reasonable cause to believe is at risk of causing imminent harm the person's self or others.

CS/HB114 makes it a public nuisance for a member to knowingly or recklessly fail to exercise reasonable controls and procedures as required by the bill. The attorney general or the district attorney may bring an action to abate a public nuisance, and upon abatement, the court may award a civil penalty of up to \$5,000 for each violation. Private causes of action to abate a public nuisance are also authorized, as well as to recover actual or punitive damages resulting from a failure to exercise reasonable controls and procedures. Costs and reasonable attorney fees may be awarded to a private party who prevails in establishing such a violation. Additionally, documentary material relating to the establishment and implementation of reasonable controls and procedures in an industry member's possession shall be made available for inspection upon written demand of the attorney general or a district attorney.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

The civil penalty authorized in CS/HB114 may generate revenue to the general fund, but as the amount of increase is determinate upon the number of civil penalties imposed in any given year, which is unknown, the impact is minimally positive.

In its analysis of the original bill, AOC warned that legislation such as this bill may result in litigation in New Mexico. As a result, increased operational costs for NMAG may be anticipated. Based upon LFC staff analysis, the one-time cost of defending a challenge to CS/HB114 is estimated to be at least \$450 thousand to NMAG. Additionally, the Department of Public Safety has advised LFC staff that it may incur additional expenses in providing extra security personnel to the courts depending on threats that may be made at an estimated cost of \$5,500 per event.

SIGNIFICANT ISSUES

In its earlier analysis, which analysis may still be applicable to this substitute, AOC reported that in 2022, California enacted the Firearm Industry Responsibility Act which is substantially similar to the original version of HB114. And in June 2023, Illinois enacted its version of the Firearm Responsibility Act. Two months later, the National Shooting Sports Foundation challenged the Illinois law in federal court as violating the First Amendment right to free speech, the Second Amendment right to bear arms, and the Fourteenth Amendment guarantee of due process. According to media coverage, the suit also claims the law imposes liability in Illinois for actions committed by other individuals, and the Illinois law is preempted by the federal Protection of Lawful Commerce in Arms Act, which arguably prohibits suing gun dealers and manufacturers for damages caused by a third party’s misuse of a firearm. AOC notes that under this federal law, 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. AOC anticipates that challenges to the constitutionality of the original HB114 will also be brought in New Mexico, which may be true for CS/HB114 as well.

AMENDMENTS

In its analysis of the original HB 114, AOC suggested providing definitions for “ammunition,” “firearm accessory,” and “reasonable controls.”

MD/ne/al