



# NEW MEXICO FIREARMS INDUSTRY ASSOCIATION

To PROTECT, PRESERVE and PROMOTE the firearms industry in New Mexico.

[www.newmexicofia.org](http://www.newmexicofia.org)

## OPPOSE HOUSE BILL 114: RECKLESS LAWSUITS AGAINST THE FIREARMS INDUSTRY

During the interim joint committee on Courts, Corrections & Justice meetings, lawmakers repeatedly stated that they wanted to target UNLAWFUL manufacturers and sellers of ILLEGAL firearms and attachments. This bill as written sweeps up LAWFUL and LEGITIMATE firearms industry members in a web of subjective, vague civil law that applies only to them and no other industry – for now. **HB 114 provides a model that can and will be used to bankrupt any industry disfavored by certain elected officials and activist groups.**

**HB 114 is unnecessary.** Bad actors in any industry who engage in unconscionable, unfair, or deceptive business practices are already held to account by the state's Unfair Trade Practices Act. Federally-licensed gun manufacturers and retailers who violate firearms laws commit federal felonies and face prison time, heavy fines, and revocation of their license by ATF. Existing laws can be applied to bad actors in this industry.

**HB 114 terms "firearm industry member" & "firearm product" are too broad.** There is no requirement that the member be *engaged in the business* of manufacturing, making or selling for purposes of sale or distribution at wholesale or retail. A person who makes their own firearm as allowed by law becomes a "manufacturer", as does a person who reloads cartridges at home as a hobby, or who makes leather holsters for sale at craft shows or farmers' markets. The administrator of an estate who sells off an estate's collection of firearms and accessories is similarly included. And the scope of the measure includes not just firearms, but any "firearm product," which the bill defines as a "firearm, firearm component, firearm accessory, ammunition or any other product sold for use as part of a firearm." Firearm components could include every screw, spring, etc. and any accessory including scopes, optics, grips, slings, tripods, flashlights, etc.

**HB 114 opens the door to firearms industry member liability for criminal acts or misuse of lawfully sold, legal products by unrelated third parties.** Section 3 of the bill requires members to establish and implement "reasonable controls and procedures" to prevent theft, ensure compliance with state laws, stop illegal straw purchases and prevent the acquisition of firearms for unlawful commerce. Members must comply with all state and federal laws as a condition of their license, *but the bill does not specify what else a member must do to avoid newly-established liability under this act.* Advocates for the legislation have stated that the courts that determine whether a member is in compliance with this section, a daunting prospect when you read over the broad enforcement mechanisms in Section 4. Additionally, Section 3 lacks any kind of knowledge or notice requirement on the part of the industry member.

**HB 114 creates public and private causes of action that could bankrupt the firearms industry.** Section 4 declares the failure to exercise undefined "reasonable controls and practices" to be a public nuisance. The state attorney general or a DA may bring a civil action to abate the nuisance and seek civil penalties of \$5,000 per violation, *but lawsuits brought by private citizens have no award limitations* (nor will those actions require show of actual harm or damages by the plaintiffs.) Court costs and attorney fees shall be awarded to prevailing plaintiffs, but not to successful defendants, setting up a low-risk-high-reward playing field for trial lawyers and anti-gun activists.

**HB 114 does not punish actual wrongdoers.** This bill doesn't have any restrictions or punishment for the actual wrongdoers, the persons in Section 3 who acquires or transfers a firearm product illegally, or for purposes of "unlawful commerce," or conceals that the purchase of a firearm is actually a straw purchase made for a person that is prohibited under state or federal law from possessing a firearm.