

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 114

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Christine Chandler and Reena Szczepanski

AN ACT

RELATING TO TRADE PRACTICES; ENACTING THE FIREARM INDUSTRY
ACCOUNTABILITY ACT; PROHIBITING FALSE ADVERTISING,
UNCONSCIONABLE, DECEPTIVE OR UNFAIR TRADE PRACTICES AND ACTIONS
THAT IMPACT PUBLIC HEALTH, SAFETY OR WELFARE; REQUIRING
REASONABLE CONTROLS AND PROCEDURES; PRESCRIBING CIVIL
PENALTIES; PROVIDING PRIVATE REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Firearm Industry Accountability Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Firearm Industry Accountability Act:

A. "false advertising" means advertising and
labeling that is misleading in any material respect, including:

(1) a misrepresentation made by statement,

1 word, design, device, sound or any combination thereof; or

2 (2) a failure to reveal relevant facts or the
3 material condition of the firearm product being advertised;

4 B. "firearm" means a weapon that is designed to or
5 may readily be converted to expel a projectile by the action of
6 an explosion or the frame or receiver of any such weapon,
7 including a handgun, rifle or shotgun;

8 C. "firearm industry member" means a person engaged
9 in the sale, manufacturing, making, importing, distribution,
10 advertising or marketing of a firearm product;

11 D. "firearm product" means a firearm, firearm
12 component, firearm accessory, ammunition or any other product
13 sold for use as part of a firearm that is:

14 (1) sold, made, manufactured, distributed,
15 advertised or marketed in this state;

16 (2) intended to be sold, made, manufactured,
17 distributed, advertised or marketed in this state; or

18 (3) possessed or used in this state or that is
19 likely to be possessed or used in this state;

20 E. "unconscionable trade practice" means an act or
21 practice in connection with the sale, manufacturing, making,
22 importing, distribution, advertising or marketing of a firearm
23 product by a firearm industry member that takes advantage of
24 the lack of knowledge, ability, experience or capacity of a
25 person to a grossly unfair degree or that results in a gross

underscored material = new
[bracketed material] = delete

1 disparity between the value received and the price paid; and

2 F. "unfair or deceptive trade practice" means a
3 false or misleading oral or written statement, visual
4 description or other representation of any kind that is
5 knowingly made in connection with the sale, manufacturing,
6 making, importing, distribution, advertising or marketing of a
7 firearm product by a firearm industry member in the regular
8 course of trade or commerce that may deceive or mislead or has
9 deceived or misled any person.

10 SECTION 3. [NEW MATERIAL] FALSE ADVERTISING.--It is
11 unlawful for a firearm industry member to falsely advertise a
12 firearm product.

13 SECTION 4. [NEW MATERIAL] UNCONSCIONABLE TRADE PRACTICES
14 OR UNFAIR OR DECEPTIVE TRADE PRACTICES.--It is unlawful for a
15 firearm industry member to use unconscionable trade practices
16 or unfair or deceptive trade practices.

17 SECTION 5. [NEW MATERIAL] HARMING THE PUBLIC.--A firearm
18 industry member may not knowingly or recklessly create,
19 maintain or contribute to anything affecting any number of
20 citizens that could negatively impact public health, safety or
21 welfare through the sale, manufacturing, making, importing,
22 advertising or marketing of a firearm product.

23 SECTION 6. [NEW MATERIAL] REASONABLE CONTROLS AND
24 PROCEDURES REQUIRED.--A firearm industry member shall establish
25 and implement reasonable controls and procedures regarding the

.226884.1

1 sale, manufacturing, making, importing, distribution, use,
2 advertising and marketing of a firearm product to:

3 A. prevent the loss or theft of a firearm product
4 from a firearm industry member;

5 B. ensure that a firearm industry member complies
6 with the provisions of federal and state laws and does not
7 promote the unlawful sale, manufacturing, making, importing,
8 distribution, use, advertising or marketing of a firearm
9 product;

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

15 D. prevent the unlawful or fraudulent sale or
16 distribution of a firearm product to a person who:

17 (1) conceals or intends to conceal that the
18 purchase of a firearm product is being made on behalf of a
19 third party, including a firearm product purchase made in
20 exchange for services or something of value, and not including
21 a bona fide gift to a person who is not prohibited by law from
22 possessing or receiving a firearm product;

23 (2) acquires or transfers or who attempts to
24 acquire or transfer a firearm product for purposes of unlawful
25 commerce;

.226884.1

underscoring material = new
~~[bracketed material] = delete~~

1 (3) is prohibited from possessing a firearm
2 under federal or state law; or

3 (4) a firearm industry member has reasonable
4 cause to believe is at risk of using a firearm product to harm
5 the person's self or to unlawfully harm another person.

6 SECTION 7. [NEW MATERIAL] RESTRAINT OF PROHIBITED ACTS--
7 REMEDIES FOR VIOLATIONS--CIVIL PENALTIES.--

8 A. Whenever the attorney general has reasonable
9 belief that a firearm industry member has violated the
10 provisions of the Firearm Industry Accountability Act or is
11 using, has used or is about to use any method, act or practice
12 that is declared to be unlawful by the Firearm Industry
13 Accountability Act, the attorney general may bring an action
14 for civil penalties in the name of the state alleging
15 violations of the provisions of the Firearm Industry
16 Accountability Act. The action may be brought in the district
17 court of the county in which the firearm industry member
18 resides or has its principal place of business or in the
19 district court in any county in which the firearm industry
20 member violated the provisions of the Firearm Industry
21 Accountability Act or is using, has used or is about to use the
22 practice that has been alleged to be unlawful under the Firearm
23 Industry Accountability Act. The attorney general acting on
24 behalf of the state of New Mexico shall not be required to post
25 bond when seeking a temporary or permanent injunction.

.226884.1

underscoring material = new
~~[bracketed material] = delete~~

1 B. Whenever a district attorney has reasonable
2 belief that a firearm industry member has violated the
3 provisions of the Firearm Industry Accountability Act or is
4 using, has used or is about to use any method, act or practice
5 that is declared to be unlawful by the Firearm Industry
6 Accountability Act in or affecting the district of the district
7 attorney, the district attorney may bring an action for civil
8 penalties in the name of the state alleging violations of the
9 provisions of the Firearm Industry Accountability Act. The
10 action may be brought in the district court of the county in
11 which the firearm industry member resides or has its principal
12 place of business or in the district court in any county in
13 which the firearm industry member violated the provisions of
14 the Firearm Industry Accountability Act or is using, has used
15 or is about to use the practice that has been alleged to be
16 unlawful under the Firearm Industry Accountability Act. A
17 district attorney acting on behalf of the state of New Mexico
18 shall not be required to post bond when seeking a temporary or
19 permanent injunction.

20 C. In an action filed pursuant to this section, the
21 attorney general or district attorney may petition the district
22 court for temporary or permanent injunctive relief or
23 restitution.

24 D. A firearm industry member who engages in false
25 advertising in violation of Section 3 of the Firearm Industry

.226884.1

underscoring material = new
~~[bracketed material] = delete~~

1 Accountability Act shall be liable for a civil penalty of not
2 more than one thousand dollars (\$1,000) for each violation,
3 which shall inure to the state and may be recovered in a civil
4 action brought by the attorney general or the district attorney
5 of the district where the violation occurred.

6 E. In an action brought under this section, if the
7 court finds that the firearm industry member is willfully using
8 or has willfully used a method, act or practice declared
9 unlawful by the Firearm Industry Accountability Act, the
10 attorney general or district attorney, upon petition to the
11 court, may recover on behalf of the state a civil penalty of
12 not more than five thousand dollars (\$5,000) for each
13 violation.

14 SECTION 8. [NEW MATERIAL] PRIVATE REMEDIES.--

15 A. A person likely to be harmed or damaged by a
16 violation of the Firearm Industry Accountability Act may
17 request equitable relief from a court of competent
18 jurisdiction. Proof of monetary damage, loss of profits or
19 intent to damage, deceive or take unfair advantage of a person
20 is not required.

21 B. A person who is actually harmed as a result of a
22 violation of the Firearm Industry Accountability Act may bring
23 an action to recover damages. The court may award punitive,
24 equitable or compensatory damages, including damages for pain
25 and suffering.

.226884.1

underscoring material = new
~~[bracketed material] = delete~~

1 C. A court shall award attorney fees and costs to
2 the party complaining of a violation of the Firearm Industry
3 Accountability Act if the party prevails.

4 D. The relief provided in this section is in
5 addition to remedies otherwise available against the same
6 conduct under federal and state law.

7 E. In a class action filed under this section, the
8 court may award damages to the named plaintiffs and members of
9 the class as provided in Subsection B of this section.

10 F. To prevail in an action under this section, the
11 party complaining of a violation is not required to demonstrate
12 the intent to cause any harm or damage, unless otherwise
13 required by the Firearm Industry Accountability Act.