

LFC Requester:	Chavez, Felix
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: _____ *Check all that apply:*
 _____ 2/10/25
 Original Correction
Bill Number: SB 318
 Amendment Substitute

Sponsor: Sen. Joseph Cervantes **Agency Name and Code** AOC
Firearms in Unfair Practices Act **Number:** 218
Person Writing _____
fsdfs _____ **Analysis:** Kathleen Sabo
Short Title: _____ **Email** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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: Conflicts with HB 61, HB 224 and HB 245 (also amending Section 57-12-2 NMSA 1978), with HB 61 (also amending Section 57-12-11 NMSA 1978) and with HB 62 (repealing Section 57-12-12 NMSA 1978).

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 318, amends statutory sections within the Unfair Practices Act (UPA), to include firearms and destructive devices in the UPA.

SB 318 makes the following specific amendments:

Section 2: amends Section 57-12-2 NMSA to define “destructive device”, “firearm”, “firearm accessory”, “firearm part”, “online marketplace”, “seller” and “third-party seller”. Additionally, SB 318 amends the following definitions”:

- o “seller-initiated telephone or internet sale”
- o “trade” or “commerce” to include manufacturing and the distribution or delivery of any goods and products, and including any trade or commerce with a person in New Mexico or to a location within this state, or any trade or commerce by a person, business or other entity that systematically serves a market in New Mexico for the same or similar goods or services at issue in any action brought in this state whether or not the specific goods and services were purchased in New Mexico, which shall be deemed, to the maximum extent permitted under the doctrine of interstate federalism, to create specific jurisdiction against a person, business or other entity that has: (a) enjoyed the benefits and protection of the laws of New Mexico; (b) benefited from the ability to enforce contracts, defend property or form effective markets in New Mexico; or (c) sold or otherwise placed a product of goods into the national market or the stream of commerce.
- o “unfair or deceptive trade practice” to include representing goods or services as legal to purchase under the laws of New Mexico or the United States when the goods or services are not legal to purchase under the laws of New Mexico or the United States; representing that good meet the warranty of merchantability or are fit for a particular purpose; and knowingly manufacturing, advertising, distributing or offering for sale a firearm, destructive device, firearm part or firearm accessory contrary to the laws of New Mexico or the United States.
- o “unconscionable trade practice” to include goods or services offered for sale by an online marketplace whether directly or by a third-party seller, and the extension of credit or in the collection of debts that to a person’s detriment violates state or federal law.

Section 4: amends Section 57-12-7 NMSA 1978 to add to the exemptions to

application of the UPA.

Section 6: amends Section 57-12-9 NMSA 1978 to remove the language that settlements do not constitute a basis for the introduction of the assurance of discontinuance as prima facie evidence against such defendant in any action or proceeding, and provides that acceptance of restitution bars recovery of damages in an action against the same defendant on account of the same unlawful practice unless the defendant fails to make restitution as agreed.

Section 7: amends Section 57-12-10 NMSA 1978 to increase the amount recoverable in an action under the UPA from actual damages or \$100, whichever is greater, to actual damages or \$10,000, whichever is greater, and increase the amount recoverable where the trier of fact finds that the party has willfully engaged in the unlawful trade practice, from an award of up to three times actual damages or \$300, whichever is greater, to an award of up to three times actual damages or \$10,000, whichever is greater.

- o Subsection C permits the court to grant an injunction against a practice under the principles of equity and on terms that the court considers reasonable, to a person aware of an unfair or deceptive trade practice or an unconscionable trade practice of another involving the manufacture, marketing, distributing, sale or offering for sale of a firearm, destructive device, firearm part or firearm accessory that violates New Mexico or federal law and requires the person to be awarded \$250,000 per violation.
- o Subsection D provides that proof of a claim involving the manufacture, marketing, distributing, sale or offering for sale of a firearm, destructive device, firearm part or firearm accessory or other unfair trade practice or an unconscionable trade practice shall comply with the specific requirements placed on such a claim by the Unfair Practices Act, and that, beyond those specific requirements, proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.
- o Removes Subsections F and G pertaining to mediation.
- o Subsection H provides that multiple parties acting in concert to manufacture, advertise, distribute or offer for sale a firearm, destructive device, firearm part or firearm accessory, which would violate the laws of New Mexico or the United States, shall be jointly and severally liable for any violations of the UPA.
- o Subsection I provides for joint and several liability for an online marketplace taking specified actions, for any violations of the UPA that occurred on the online marketplace.
- o Subsection J requires an online marketplace to comply to comply with validly issued subpoenas that seek information about a third-party seller.
- o Subsection K provides that a willful failure or refusal to respond to a subpoena described in Subsection J is itself a violation of the UPA, for which a court is required to award the requesting party specified statutory damages.
- o Subsection L deems an online marketplace, seller or third-party seller that does not maintain a place of business in the U.S. or that conceals its place or business and offers good or services for sale inside New Mexico to have: (1) minimum contacts with NM; (2) invoked the benefits and protections of the laws of NM; (3) purposely availed itself of the privileges of conducting activities within New Mexico; and (4) reasonably anticipated being haled into a court within New Mexico.

Section 8: amends Section 57-12-11 NMSA 1978 to increase the civil penalty that the

Attorney General (AG) may recover on behalf of the state from a maximum of \$5,000 per violation to a maximum of \$25,000 per violation, unless the violation involved the manufacturing, advertising, distribution or sale of a firearm, in which case the attorney general may petition the court for a civil penalty not exceeding \$250,000 per violation.

Section 9: amends Section 57-12-2 NMSA 1978, governing a civil investigative demand, Subsection F to provide that documentary material produced pursuant to a demand, unless ordered by the court, is subject to the Inspection of Public Records Act and discoverable by any party to an action brought pursuant to the UPA.

Section 11: amends Section 57-12-16 NMSA 1978 to clarify that the UPA does not apply to media, unless the publication, broadcast or reproduction violates the laws of NM or the U.S.

SB 318, Section 12 enacts a new Section 57-12-3.2 NMSA 1978 within the UPA, to provide that it is an unlawful practice within the meaning of the UPA for any person to violate the provisions of Section 30-7-7 NMSA 1978 (governing the unlawful sale, possession or transportation of explosives), or the laws of NM or the U.S. controlling the manufacture, advertising, distribution or sale of firearms.

SB 318 amends Section 53-17-2 NMSA 1978, governing powers of a foreign corporation, to provide that a foreign corporation that has received a certificate of authority under the Business Corporation Act consents to general personal jurisdiction in this state.

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: the imposition of fines, commenced prosecutions and actions under the Unfair Practices Act, and appeals from fine impositions, convictions and actions brought pursuant to the Unfair Practices Act, as well as actions to enforce the Inspection of Public Records Act by the Attorney General (AG) or a person whose written request has been denied, and appeals from the issuance of a writ of mandamus, the ordering of an injunction or other appropriate remedy, or the awarding of damages, costs and reasonable attorneys' fees to a person who is successful in a court action to enforce the provisions of the Inspection of Public Records Act. 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) In 2024, SB 428, "Firearms in Unfair Practices" was introduced. (<https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=428&year=23> .) A resulting Senate Judiciary Committee was introduced and subsequent House Judiciary Committee amendments appear to make the SJC substitute bill a duplicate to SB 318. The FIR for 2024's SB 428 can be found at <https://www.nmlegis.gov/Sessions/23%20Regular/firs/SB0428.PDF> .

Also in 2024, HB 114 was introduced, enacting the Firearm Industry Accountability Act, prohibiting false advertising, unconscionable, deceptive or unfair trade practices and actions, as does the Unfair Trade Practices Act, Section 57-12-1 NMSA 1978 et. seq. (See the FIR for HB 114, including for the HCPAC substitute for HB 114 and subsequent amendments at <https://www.nmlegis.gov/Sessions/24%20Regular/firs/HB0114.PDF> .)

- 2) In March of 2019, the Connecticut Supreme Court revived the Sandy Hook plaintiffs' law suit against the manufacturer of an AR-15-type firearm that was used to kill 20 children and six educators at the Sandy Hook Elementary School in Newtown, Connecticut in 2012. [Soto v. Bushmaster Firearms Int'l, LLC](#), No. 19832, 2019 WL 1187339 (Conn. Mar. 19, 2019). The Court, in a 4-3 ruling, carved a narrow exception to a federal law that protects the gun industry from legal liability for gun violence.

Bushmaster, a subsidiary of Remington, manufactured and marketed an AR-15-type semi-automatic rifle that was used by David Lanza, 20, to gun down the Sandy Hook victims. The firearm, passing through several hands, was legally purchased by Lanza's mother for her son's use. The plaintiffs, the estates and surviving family members of some of the victims, brought suit under a variety of theories, but the trial court dismissed the suit, primarily in reliance on the Protection of Lawful Commerce in Arms Act [PLCCA], passed by Congress in 2005. The Connecticut Supreme Court transferred the plaintiffs' appeal to itself from the Connecticut Appellate Court.

The PLCCA, through federal preemption, protects firearm manufacturers and dealers from liability for the "criminal or lawful misuse" of their products. Exceptions to the PLCAA are limited but include design or manufacturing defects, negligent entrustment, and knowing violations of an underlying statute that is applicable to sale and marketing laws (i.e. the predicate exception rule). The plaintiffs argued that the defendant's marketing violated [the Connecticut Unfair Trade Practices Act or] CUTPA and that CUTPA qualifies as a predicate exception to federal preemption. The Connecticut Supreme Court agreed.

The plaintiffs alleged that the manufacturer knowingly marketed and advertised its AR-15-type rifle to attract buyers by promoting the weapon's militaristic capabilities. The plaintiffs argued that by using military imagery to entice consumers, the manufacturer's conduct constituted an unfair trade practice under Connecticut state law, thus falling within the predicate exception rule of the PLCAA. The Court wrote,

The plaintiffs' second theory of liability is that the defendants' advertised and marketed the XM15-E2S in an unethical, oppressive, immoral and unscrupulous manner. They contend that the defendants' have sought to grow the AR-15 market by extolling the militaristic and assaultive qualities of their AR-15 rifles and, specifically, the weapon's suitability for offensive combat missions. The plaintiffs argue that the defendants' militaristic marketing reinforces the image of the AR-15 as a combat weapon that is intended to be used for the purposes of waging war and killing human beings. Consistent with that image, the defendants' further promoted the XM15-E2S as a combat weapon system by designating in their product catalogues that the rifle comes "standard" with a 30 round magazine which, the plaintiffs allege, differs from how the defendants' promote and sell rifles for legal civilian purposes such as hunting and sport shooting.

Connecticut law, the Court held, does not allow advertising that encourages violent or criminal conduct and, therefore, as alleged the defendants' marketing violates CUTPA. "We further conclude that PLCAA does not bar the plaintiffs from proceeding on the single, limited theory that the defendants' violated CUTPA by marketing the XM15-E2S to civilians for criminal purposes, and that those wrongful marketing tactics caused or contributed to the Sandy Hook massacre.¹⁴"

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UPDATE 11/13/19: The United States Supreme Court, on November 12, 2019, denied Remington’s petition for review, leaving in place a ruling by the Connecticut Supreme Court permitting a lawsuit to proceed against the gun manufacturer for the Sandy Hook massacre. Of critical import, the Justices let stand the Connecticut ruling that a federal law protecting firearm manufacturers and dealers from liability for the “criminal or lawful misuse” of their products does not preempt the state’s consumer protection laws.

See *Connecticut Supreme Court Finds Unfair Trade Practices Act Not Preempted by Federal Law, Reinstates Sandy Hook Plaintiffs’ Suit Against Manufacturer*, March 2019, <https://www.hurwitzfine.com/blog/connecticut-supreme-court-finds-unfair-trade-practices-act-not-preempted-by-federal-law-reinstates-sandy-hook-plaintiffs-suit-ag> . See also, *Outgunned No More?: Reviving a Firearms Industry Mass Tort Litigation*, Southwestern Law Review, <https://www.swlaw.edu/sites/default/files/2021-06/49SwLRev390.pdf> .

- 3) SB 318, Section 9 amends Section 57-12-2(F) NMSA 1978, governing a civil investigative demand, to provide that documentary material produced pursuant to a demand, unless ordered by the court, is subject to the Inspection of Public Records Act and discoverable by any party to an action brought pursuant to the UPA. Section 14-2-12 NMSA 1978, within the Inspection of Public Records Act (IPRA), and governing enforcement, permits an action to enforce IPRA to be brought by the AG or a person whose written request has been denied. The statute permits a district court to issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of IPRA. The statute further permits a court to award damages, costs and reasonable attorneys’ fees to a person who is successful in a court action to enforce the provisions of IPRA.

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

Conflicts with HB 61, HB 224 and HB 245 (also amending Section 57-12-2 NMSA 1978), with HB 61 (also amending Section 57-12-11 NMSA 1978) and with HB 62 (repealing Section 57-12-12 NMSA 1978).

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS