

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 1594 (Ting) – As Amended April 20, 2022

Policy Committee: Judiciary

Vote: 7 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

**SUMMARY:**

This bill authorizes the Department of Justice (DOJ), local governments and survivors of gun violence to file a civil action in a California court for damages against a gun manufacturer, importer or dealer that violates firearm industry standards of conduct, as specified.

**FISCAL EFFECT:**

- 1) Cost pressures (Trial Court Trust Fund) in the mid-hundreds of thousands of dollars for trial courts to hear and adjudicate civil actions against firearms manufacturers. This bill authorizes the DOJ, local entities and private citizens to file a civil action for damages against a gun manufacturer, importer or dealer that violates the firearms industry standards of conduct, as defined by the bill. It is unclear how many new actions will be filed, but if five cases are filed in civil court annually requiring seven to ten days or 56 to 80 hours of court time, at an average cost per hour of \$1,000 in workload costs, the cost to the trial courts would be between \$280,000 and \$400,000 annually. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties.
- 2) Costs (GF) of \$3.3 million in fiscal year (FY) 2023-24, and \$3 million annually thereafter for DOJ in additional staff to provide expert consultation on firearms suits and additional litigation staff to prosecute civil actions against firearms manufactures.

**COMMENTS:**

- 1) **Purpose.** According to the author:

AB 1594 aims to ensure the gun industry does not evade basic principles of civil justice that all others in society are subjected to by allowing the California Attorney General, local governments, and survivors of gun violence to pursue legal action in California courts against irresponsible, reckless, and negligent gun manufacturers, importers and dealers.

- 2) **Protection of Lawful Commerce in Arms Act (PLCAA).** 15 U.S.C. section 7902 generally prohibits filing any civil action, in either state or federal court, against a firearms manufacturer, distributor, dealer or importer of a firearm or ammunition. Section 7901 states its intent is to protect firearms manufacturers from liability caused by criminal misuse of



firearms. Additionally, section 7901 expresses the intent of Congress to preempt state laws to the contrary. (15 U.S.C. § 7901 (b)(6) and (7); Ileto v. Glock, Inc. (9th Cir. 2009) 565 F.3d 1126, 1129 (“Congress clearly intended the PLCAA to preempt common-law claims such as general tort theories of liability.”).) The PLCAA contains several exceptions including an action against a seller for negligent entrustment or negligence in general or an action where a manufacturer knowingly violates a state or federal law applicable to the sale or marketing of a firearm, and the violation was a proximate cause of the harm. Several federal courts have narrowly construed the phrase “state or federal law applicable to the sale or marketing of a firearm.” City of New York v. Beretta U.S.A. Corp. (2d Cir. 2008) 524 F.3d 384, 399-400 held the meaning of the term “applicable” must be determined in the context of the statute and the PLCAA provides several examples of where in existing law an applicable statute might apply: (a) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record related to the lawfulness of the sale required to be kept under federal or state law; and (b) any case in which the manufacturer or seller transferred or sold a firearm or ammunition knowing, or having reasonable cause to believe, that the actual buyer of was prohibited from possessing or receiving a firearm or ammunition.

Plaintiffs in the Sandy Hook Elementary School shooting case recently settled a multi-million dollar lawsuit against Bushmaster Firearms wherein the Connecticut Supreme Court ruled Bushmaster Firearms International violated Connecticut’s Unfair Trade Practices Act by engaging in deceptive advertising practices. The Connecticut Supreme Court found that state’s Unfair Trade Practices Act fell within the definition of a state law “applicable to the sale or marketing of a firearm” and, for this reason, denied Bushmaster’s attempt to dismiss the case. This case settled and will not be appealed.

This bill sets specific firearm industry standards of conduct and allows certain state and local offices and individual plaintiffs to file suit for damages if those standards are violated. If this bill is signed, it will likely face significant litigation for which the DOJ will be responsible for handling. While litigation costs are not subject to reimbursement and are often highly speculative, DOJ may have to retain more attorneys to handle cases related to the defense of this legislation. This cost would be in addition to the costs identified by DOJ to prosecute cases pursuant to this bill.

3) **Arguments in Support.** According to the Brady Campaign:

The possibility of civil liability will not only provide civil justice to victims and survivors but also encourage the gun industry to act responsibly to help stem the tide of crime guns that harm Californians, particularly in urban areas where communities of color are disproportionately harmed.

4) **Arguments in Opposition.** According to the National Rifle Association:

AB 1594 seeks to frustrate law-abiding gun owners and the firearms industry by empowering tort attorneys and politically-motivated public attorneys to drive firearm, ammunition, and



firearm accessories manufacturers, wholesalers, and dealers out of business with frivolous litigation.

**Analysis Prepared by:** Kimberly Horiuchi / APPR. / (916) 319-2081