

## ASSEMBLY THIRD READING

AB 1594 (Ting, et al.)

As Amended May 23, 2022

Majority vote

**SUMMARY**

Allows the California Attorney General, local governments, and survivors of gun violence to pursue legal action in California courts against gun manufacturers, importers and dealers who are irresponsible, reckless, and negligent in the sale or marketing of their products in California.

**Major Provisions**

- 1) Makes findings and declarations regarding the Legislature's intent and purpose in enacting the Firearm Industry Responsibility Act, including the intent to protect public health and safety in California by promoting safe and responsible firearm industry member practices and ensuring that firearm industry members may be held justly accountable for wrongful conduct that endangers and harms the public in California.
- 2) Defines relevant terms in this bill.
- 3) Provides that a firearm industry member must comply with the firearm industry standard of conduct; and it shall be a violation of the firearm industry standard of conduct for a firearm industry member to fail to comply with any requirement below:
  - a) A firearm industry member who manufactures, markets, imports, offers for wholesale, or offers for retail sale a firearm-related product shall do both of the following:
    - i) Establish, implement, and enforce reasonable controls.
    - ii) Take reasonable precautions to ensure that the firearm industry member does not sell, distribute, or provide a firearm-related product to a downstream distributor or retailer of firearm-related products who fails to establish, implement, and enforce reasonable controls.
  - b) A firearm industry member shall not manufacture, market, import, offer for wholesale, or offer for retail sale a firearm-related product that is likely to create an unreasonable risk of harm to public health and safety in California; provides, for the purposes of this prohibition, that the following apply:
    - i) A firearm-related product shall not be considered abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety based on a firearm's inherent capacity to cause injury or lethal harm.
    - ii) There shall be a presumption that a firearm-related product is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety if any of the following exist:
      - A) The firearm-related product's features render the product most suitable for assaultive purposes instead of lawful self-defense, hunting, or other legitimate sport and recreational activities.

- B) The firearm related-product is designed, sold, or marketed in a manner that foreseeably promotes conversion of legal firearm related-products into illegal firearm-related products; or
  - C) The firearm-related product is **or was possessed in California and** designed, sold, or marketed in a manner that is targeted at minors or other individuals who are legally prohibited from accessing firearms.
- c) A firearm industry member shall not engage in any conduct related to the sale or marketing of firearm-related products that is in violation of a number of existing laws that regulate the marketing and sale of consumer products.
- 4) Makes an act or omission by a firearm industry member in violation of the firearm industry standard of conduct shall be actionable under this section.
- 5) Provides that the following may bring an action in a court of competent jurisdiction:
- a) A person who has suffered harm in California because of a firearm industry member's conduct.
  - b) The Attorney General, in the name of the people of the State of California, to enforce the bill's requirements and remedy harm caused by a violation.
  - c) A city attorney, in the name of the people of that city, to enforce to enforce the bill's requirements and remedy harm caused by a violation.
- 6) A county counsel, in the name of the people of that county, to enforce the bill's requirements and remedy harm caused by a violation.
- 7) Authorizes a court, if it determines that a firearm industry member engaged in conduct in violation of the firearm industry standard of conduct set forth above to award any or all of the following:
- a) Injunctive relief sufficient to prevent the firearm industry member and any other defendant from further violating the law.
  - b) Damages.
  - c) Attorney's fees and costs.
  - d) Any other appropriate relief necessary to enforce this title and remedy the harm caused by the conduct.
- 8) States that the bill shall be construed and applied in a manner that is consistent with the requirements of the California and the United States Constitutions.
- 9) Makes this bill operative on July 1, 2023.
- 10) Includes a severability clause.

**COMMENTS**

This bill, co-sponsored by the Brady Campaign and Attorney General Rob Bonta, would allow the California Attorney General, local governments, and survivors of gun violence to pursue legal action in California courts against gun manufacturers, importers and dealers who are irresponsible, reckless, and negligent in the sale or marketing of their products in California. In doing so, it would apply basic principles of civil justice and accountability to these parties, just as they apply to all others in society.

As a general rule, "[e]veryone is responsible, not only for the result of [their] willful acts, but also for an injury occasioned to another by [their] want of ordinary care or skill in the management of [their] property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury [on themselves]." (Civil Code Section 1714 (a).) According to the California Supreme Court, Section 1714 embodies a fundamental principle of liability for failure to exercise such care, and that "it is clear that in the absence of statutory provision declaring an exception to the fundamental principle enunciated by Civil Code Section 1714, no such exception should be made unless clearly supported by public policy." (*Rowland v. Christian* (1968) 69 Cal. 2d 108, 112.)

Despite this principle of personal accountability for wrongdoing, as well as the state's numerous gun restrictions, the right to file a civil action against a gun manufacturer or dealer is hamstrung by a federal immunity statute titled the Protection of Lawful Commerce in Arms Act. (15 United States Code Section 7902.) Signed by President George W. Bush in 2005, the Protection of Lawful Commerce in Arms Act (PLCAA) prohibits civil liability actions from being brought in State or Federal Court against gun dealers and manufacturers for harm incurred due to the illegal use of non-defective products. Importantly, the PLCAA specifies six exceptions to this prohibition, including for, "An action in which a manufacturer or seller of a firearm, ammunition, or components parts *"knowingly violated a State or Federal statute applicable to the sale or marketing of the product,* and the violation was a proximate cause of the harm for which relief is sought." This exception, also known as the "predicate exception," has been the subject of considerable judicial scrutiny. Under this exception, a plaintiff may bring a suit if they successfully prove that a manufacturer or dealer knowingly violated an underlying statute "applicable to the sale or marketing" of a firearm or ammunition and this violation was the proximate cause of the harm. Two federal appellate rulings have adopted a narrow interpretation of the word "applicable," ruling that "applicable" statutes are those that specifically regulate the firearm industry. (See *City of New York v. Beretta USA Corp.* (2nd Cir. 2008) 524 F.3d 384 and *Ileto v. Glock, Inc.* (9th Cir. 2009) 565 F.3d 1126.) However, some courts have adopted a broader interpretation of the predicate exception. For example, in a suit filed by the parents of the Sandy Hook victims against Remington Arms, the manufacturer of the rifle used to kill 26 people (20 of whom were children between six and seven years old), at Sandy Hook Elementary School, the Connecticut Supreme Court ruled that the defendants, by marketing the illegal use of their products, violated the Connecticut Unfair Trade Practices Act (CUTPA). (*Soto v. Bushmaster Firearms Int'l, LLC.* (Conn. 2019) 202 A.3d 262.) The court noted that, because deceptive marketing is regulated by unfair trade practice laws, rather than firearms-specific statutes, the predicate exception applied.

*This bill.* In order to hold gun manufacturers, importers and dealers who are irresponsible, reckless, and negligent in the sale or marketing of their products to the same standard of

accountability for their actions as other parties, this bill would clearly state the conditions under which they are subject to liability for their wrongdoing.

The bill creates a "firearm industry standard of conduct" that applies to every "firearm industry member" (defined to mean "a person, firm, corporation, company, partnership, society, joint stock company, or any other entity or association engaged in the manufacture, distribution, importation, marketing, wholesale, or retail sale of firearm-related products"). The standard of conduct would require such a member to do certain things, and prohibit them from doing others. Failure to comply with any requirement of the standard of conduct would be a violation of the firearm industry standard of conduct, and cause for bringing a civil action – by the AG, a city attorney, county counsel, or person who has suffered harm in California because of a firearm industry member's conduct – in a court of competent jurisdiction against the firearm industry member.

*Remedies for violations of the firearm industry standard of conduct.* The bill authorizes several potential plaintiffs to bring a civil action pursuant to the bill. First, any person "who has suffered harm in California because of a firearm industry member's conduct" in violation of the firearm industry standard of conduct could bring an action in a court of competent jurisdiction. Second, the Attorney General would be allowed to bring a civil action in a court of competent jurisdiction in the name of the people of the State of California to enforce the requirements and prohibitions of the bill and to remedy harm caused by a violation of the bill. Finally, any city attorney or county counsel would be authorized to bring a civil action in a court of competent jurisdiction in the name of the people of that city or county to enforce this title and remedy harm caused by a violation of the bill. If a court determined that a firearm industry member engaged in conduct in violation of the firearm industry standard of conduct established by the bill, it could award any or all of the following: 1) injunctive relief sufficient to prevent the firearm industry member and any other defendant from further violating the law; 2) damages; 3) attorney's fees and costs; 4) any other appropriate relief necessary to enforce this title and remedy the harm caused by the conduct.

### **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.

### **Arguments in Support**

Co-sponsor Brady Campaign writes the following about why this bill is necessary:

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.

### **Arguments in Opposition**

In their letter of opposition, the National Rifle Association writes the following about this bill:

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.

## FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 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.

## VOTES

### ASM JUDICIARY: 7-2-2

**YES:** Stone, Kalra, Maienschein, Reyes, Robert Rivas, Lee, Wicks

**NO:** Cunningham, Kiley

**ABS, ABST OR NV:** Patterson, Holden

### ASM APPROPRIATIONS: 12-4-0

**YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**NO:** Bigelow, Megan Dahle, Davies, Fong

## UPDATED

VERSION: May 23, 2022

CONSULTANT: Alison Merrilees and Alec Watts / JUD. / (916) 319-2334

FN: 0002940