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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### AB 1594 (Ting) - Firearms: civil suits

**Version:** May 23, 2022

**Urgency:** No

**Hearing Date:** June 16, 2022

**Policy Vote:**

**Mandate:** No

**Consultant:** Matthew Fleming

**Bill Summary:** AB 1594 would establish a “firearm industry standard of conduct,” which places a series of requirements on industry members and prohibits specified practices.

#### **Fiscal Impact:**

- DOJ: The DOJ reports costs of up to \$221,000 in Fiscal Year (FY) 2022-23, \$3.7 million in FY 2023-24, \$3.6 million in FY 2024-25, \$3.4 million in FY 2025-26, and \$1.5 million ongoing thereafter, for the Department of Justice (DOJ) to increase staff to provide expert consultation in lawsuits, defend against legal challenges, and hire additional litigation staff to prosecute civil actions against firearms manufacturers. (General Fund).
- Courts: Unknown, potentially-significant workload cost pressures as the courts are required to adjudicate violations of the industry standard (Special Fund - Trial Court Trust Fund, General Fund). See Staff Comments for additional detail.

**Background:** 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.

There has been nearly continuous litigation in the federal courts over California's firearms laws. Last year, a federal judge ruled that California's ban on the AR-15 assault rifle was unconstitutional. (See *Miller v. Bonta*, (S.D. Cal., June 4, 2021) 542 F. Supp. 3d 1009.) *Miller* was the third federal district court decision in recent years to find a California firearms regulation unconstitutional under the Second Amendment to the United States Constitution, joining *Rhode v. Becerra* (S.D. Cal., 2020) 445 F. Supp. 3d 902 (ammunition background checks), and *Duncan v. Becerra* (9th Cir. 2020) 970 F.3d 1133 (high-capacity magazines). *Duncan* was subsequently overturned by the Ninth Circuit Court of Appeals sitting *en banc*. (*Duncan v. Bonta* (9th Cir. 2021) 19 F.4th 1087). This firearms bill may be likely to face a similar constitutional challenge.

**Proposed Law:**

- Establishes, and requires a firearm industry member to comply with, the firearm industry standard of conduct.
- Requires a firearm industry member to establish, implement, and enforce reasonable controls and to take reasonable precautions to ensure it does not sell, distribute, or provide a firearm-related product to a downstream distributor or retailer who fails to establish, implement, and enforce reasonable controls.
- Provides that there shall be a rebuttable presumption that the firearm industry member failed to implement reasonable controls if the member's action or failure to act created a reasonably foreseeable risk that the harm alleged by the claimant would occur and the member could have established, implemented, and enforced reasonable controls to prevent or substantially mitigate the risk that the harm would occur. If established, the member has the burden of proving by a preponderance of the evidence that it established, implemented, and enforced reasonable controls.
- Provides that a firearm industry member shall not manufacture, market, import, offer for wholesale sale, or offer for retail sale a firearm-related product that is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety in California. A product is not in violation based on a firearm's inherent capacity to cause injury or lethal harm.
- Establishes 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 the product has specified features.
- Provides that there shall be a rebuttable presumption that the firearm industry member failed to implement reasonable controls if the member's action or failure to act created a reasonably foreseeable risk that the harm alleged by the claimant would occur and the member could have established, implemented, and enforced reasonable controls to prevent or substantially mitigate the risk that the harm would occur. If established, the member has the burden of proving by a preponderance of the evidence that it established, implemented, and enforced reasonable controls.
- Provides that a firearm industry member shall not manufacture, market, import, offer for wholesale sale, or offer for retail sale a firearm-related product that is abnormally dangerous and likely to create an unreasonable risk of harm to public health and

safety in California. A product is not in violation based on a firearm's inherent capacity to cause injury or lethal harm.

- Establishes 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 the product.
- Defines terms for purposes of the bill, and delays implementation until July 1, 2023.

**Related Legislation:** SB 1384 (Min, 2022) would require licensed firearm dealers (licensees) to install specified security measures in gun stores, carry general liability insurance policies, and have employees attend training courses designed by the Department of Justice (DOJ). SB 1384 is pending in the Assembly Appropriations Committee.

**Staff Comments:** While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. The proposed 2022-2023 budget would appropriate \$138.5 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. Increased court workload results in additional pressure to increase the backfill amount appropriated from the General Fund for trial court operations.

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