
THIRD READING

Bill No: AB 1594
Author: Ting (D), Gipson (D) and Ward (D), et al.
Amended: 5/23/22 in Assembly
Vote: 21

SENATE JUDICIARY COMMITTEE: 8-2, 6/14/22
AYES: Umberg, Durazo, Gonzalez, Hertzberg, Laird, Stern, Wieckowski, Wiener
NOES: Borgeas, Jones
NO VOTE RECORDED: Caballero

SENATE APPROPRIATIONS COMMITTEE: 5-1, 6/16/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates
NO VOTE RECORDED: Jones

ASSEMBLY FLOOR: 50-20, 5/26/22 - See last page for vote

SUBJECT: Firearms: civil suits

SOURCE: Attorney General Rob Bonta
Brady Campaign
Brady Campaign to Prevent Gun Violence

DIGEST: This bill establishes the “firearm industry standard of conduct,” which places a series of requirements on industry members and prohibits specified practices.

ANALYSIS:

Existing federal law:

- 1) Provides, pursuant to the Second Amendment to the United States Constitution, that a well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed. (U.S. Const. Amend. 2.)

- 2) Prohibits a qualified civil liability action from being brought in any federal or state court. (15 U.S.C. § 7902.)

Existing state law:

- 1) Defines “firearm” as a device designed to be used as a weapon from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. (Pen. Code § 16520.) It defines “firearm precursor part” to mean a component of a firearm that is necessary to build or assemble a firearm and is either an unfinished receiver or an unfinished handgun frame. (Pen. Code § 16531.) Defines “ammunition” to include any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding device, or projectile capable of being fired from a firearm with a deadly consequence. (Pen. Code § 16150(b).)
- 2) Provides that any person who manufactures, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided, is guilty of a felony. (Pen. Code § 30600.)
- 3) Requires, as of July 1, 2022, that the sale of a firearm precursor part be conducted by or processed through a licensed firearm precursor part vendor. (Pen. Code § 30412.) It also prohibits certain persons from owning or possessing firearm precursor parts and provides other limitations on such parts. (Pen. Code § 30400 et seq.)
- 4) Requires firearms dealers to obtain identifying information from purchasers and forward that information, via electronic transfer, to the Department of Justice (DOJ) for a background check to determine whether they are prohibited from possessing a firearm. (Pen. Code §§ 28160-28220.)
- 5) Requires a person be at least 18 years of age to be sold most firearms, except as specified. (Pen. Code §§ 27505, 27510.)
- 6) Establishes the Privacy Rights for California Minors in the Digital World (PRCMDW), which prohibits an operator of an internet website, online service, online application, or mobile application (“operator”) from specified conduct involving content directed at minors. (Bus. & Prof. Code § 22580.)
- 7) Requires, pursuant to the Parent’s Accountability and Child Protection Act, a person or business that conducts business in California, and that seeks to sell any product or service in or into California that is illegal under state law to sell to a minor to take reasonable steps, as specified, to ensure that the purchaser is

of legal age at the time of purchase or delivery, including, but not limited to, verifying the age of the purchaser. (Civ. Code § 1798.99.1(a)(1).)

This bill:

- 1) Establishes, and requires a firearm industry member to comply with, the firearm industry standard of conduct.
- 2) Defines a “firearm industry member” to include 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.
- 3) Defines a “firearm-related product” as a firearm, ammunition, a firearm precursor part, a firearm component, or a firearm accessory with a connection to California, as specified.
- 4) Requires a 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 do establish reasonable controls.
- 5) Defines “reasonable controls” to mean reasonable procedures, acts, or practices that are designed, implemented, and enforced to prevent certain sales, loss, or theft and to ensure the member follows applicable laws.
- 6) 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.
- 7) 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.

- 8) 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:
 - a) Has features that render the product most suitable for assaultive purposes instead of lawful self-defense, hunting, or other legitimate sport and recreational activities;
 - b) Is designed, sold, or marketed in a manner that foreseeably promotes conversion of legal firearm-related products into illegal products; or
 - c) Is designed, sold, or marketed in a manner that is targeted at minors or other individuals who are legally prohibited from accessing firearms.
- 9) Prohibits a firearm industry member from engaging in any conduct related to the sale or marketing of firearm-related products that is in violation of the False Advertising Law, Business and Professions Code Section 17500 et seq., the Unfair Competition Law, Business and Professions Code Section 17200 et seq., and the Consumers Legal Remedies Act.
- 10) Authorizes the Attorney General, a city attorney, a county counsel, or a person who has suffered harm in California to bring a civil action against a firearm industry member in violation of the firearm industry standard of conduct laid out above.
- 11) Authorizes a court to award injunctive relief sufficient to prevent the firearm industry member and any other defendant from further violating the law, damages, attorney's fees and costs, and other appropriate relief.
- 12) Provides that an intervening act by a third party, including, but not limited to, criminal misuse of a firearm-related product, shall not preclude a firearm industry member from liability under this bill.
- 13) Includes an operative date of July 1, 2023, and a severability clause.

Comments

The Firearm Industry Standard of Conduct

This bill establishes the “firearm industry standard of conduct,” which regulates “firearm industry members,” defined as “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.” “Firearm-related products” include firearms, ammunition, firearm precursor parts, firearm components, and firearm accessories. The standard of conduct lays out various obligations and prohibitions with accompanying presumptions. (NOTE: For a more thorough analysis, please see the Senate Judiciary Committee analysis of the bill.)

Legal obstacles

The Second Amendment to the United States Constitution holds: “A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” While it is clear that states have authority to regulate firearms, any robust regulation, such as this bill, will be susceptible to challenge. Indeed, in one relevant example, a federal appeals court recently struck down California’s laws limiting sales of semiautomatic rifles to persons under 21 years of age.

In addition to the barriers faced by courts’ interpretation of the Second Amendment, the federal Protection of Lawful Commerce in Arms Act (PLCAA), signed into law in 2005 by President Bush, prohibits a qualified civil liability action from being brought in any federal or state court. (15 U.S.C. § 7902.) A “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. (15 U.S.C. § 7903.) These statutes stand to preempt state laws that impose liability on manufacturers, sellers, and trade associations for the misuse of firearms by third parties.

This bill seeks to hold firearm industry members, including manufacturers and sellers, accountable for harms they foreseeably cause and to require them to institute reasonable practices to avoid harm. Challenge on these grounds is likely but there are certainly exceptions to the PLCAA’s preemptive effect, including one that explicitly provides it does not preempt “an action in which a manufacturer or seller of a qualified product 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.” (15 U.S.C. § 7903.)

According to the author:

Almost every industry in the U.S. is held liable for what their products do, but the gun industry is not held to the same standard. In 2005, President Bush

signed the Protection of Lawful Commerce in Arms Act (PLCAA), which provides gun manufacturers and dealers with some immunity from lawsuits. This was a result of the gun industry's lobbying after a series of lawsuits in the 1990's held the firearm industry liable for reckless practices.

PLCAA shields gun manufacturers and dealers from legal accountability, consequently disincentivizing the firearms industry from following all federal, state and local laws ensuring all firearms meet California standards, and educating gun purchasers of their responsibilities. Though there are some exceptions to PLCAA, there remains limited liability ability to hold the industry accountable and as a result, those impacted by gun violence are often unable to seek accountability and justice.

According to a 2021 PPIC report, California saw a rise of more than 500 homicides in 2020 of which gun deaths accounted for 91 percent.

AB 1594 will allow 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. It is critical that the gun industry not be able to evade basic principles of civil justice that all others in society are subject to.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- 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 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).

SUPPORT: (Verified 6/20/22)

Attorney General Rob Bonta (co-source)

Brady California (co-source)

Brady Campaign to Prevent Gun Violence (co-source)

California School Employees Association

City and County of San Francisco
City of Berkeley
City of Los Angeles
Consumer Attorneys of California
County of San Diego
Everytown for Gun Safety
Friends Committee on Legislation of California
Giffords
March for Our Lives
Moms Demand Action for Gun Sense in America
Students Demand Action for Gun Sense in America
Team Enough
Women Against Gun Violence

OPPOSITION: (Verified 6/20/22)

California Rifle and Pistol Association, Inc.
National Rifle Association

ARGUMENTS IN SUPPORT: Everytown for Gun Safety, Moms Demand Action for Gun Sense in America, and Students Demand Action for Gun Sense in America write in support:

AB 1594 will function as an exception to PLCAA, ensuring that valid civil claims can be brought against the gun industry for their dangerous, negligent, and even unlawful actions. 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. Having operated with special protections for years, the industry has had no financial incentive to curb irresponsible conduct and instead puts profits over people. The prospect of civil liability can lead to safer products and better conduct that the industry has resisted for years.

ARGUMENTS IN OPPOSITION: The National Rifle Association asserts:

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. Under the legislation, members of the firearm industry would be required to implement “reasonable controls” on their businesses. The term “reasonable controls” is

not defined as conforming to a specific set of measures or regulations, rather these “controls” are indeterminate and would be above and beyond what California and federal law explicitly require. Moreover, industry members would be required to ensure that any other member of the industry that they deal with has implemented such “reasonable controls.”

ASSEMBLY FLOOR: 50-20, 5/26/22

AYES: Aguiar-Curry, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooper, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Irwin, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Chen, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Mayes, Nguyen, Patterson, Salas, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Arambula, Berman, Choi, Cooley, Gray, Jones-Sawyer, O'Donnell, Villapudua

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
6/22/22 14:42:21

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