
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 2571 (Bauer-Kahan) - Firearms: advertising to minors

Version: June 15, 2022

Urgency: Yes

Hearing Date: June 16, 2022

Policy Vote:

Mandate: No

Consultant: Matthew Fleming

Bill Summary: AB 2571, an urgency measure, would prohibit firearm industry members from advertising or marketing firearm-related products to minors.

Fiscal Impact:

- DOJ: The Department of Justice DOJ reports costs of \$442,000 in Fiscal Year (FY) 2022-23, \$776,000 in F 2023-24, \$776,000 in FY 2024-25, \$596,000 in FY 2025-26, and \$388,000 annually thereafter (General Fund).
- Courts: Unknown, potentially-significant workload cost pressures as the courts are required to adjudicate violations of this bill's provisions (Special Fund - Trial Court Trust Fund, General Fund). See Staff Comments for additional detail.

Background: In the United States, children are more likely to die from gun violence than in any other high-income country. In 2020, gun violence overtook car accidents to become the number one cause of death for U.S. children and adolescents. In California, children are generally restricted from purchasing and possessing firearms and ammunition, except under specified circumstances. Nonetheless, according to an analysis of FBI data, in 29 of 62 active shooting incidents at educational facilities in the United States between 2000 and 2019, the offender was younger than 18, with an additional 10 shooters between 18 and 21 years old. Another federally-run center database shows at least 59 percent of the 2,275 school shootings researchers recorded since 1970 were committed by someone under 21 years old. The offender's age is unknown in another 18 percent of incidents.

There has been a variety of reporting on the subject of marketing firearms to children. Some examples of this practice include 1) the "Crickett rifle," a gun made for children by the company Keystone Sporting Arms. Keystone's website and some of its merchandise bear the image of "Davey Crickett," a gun-wielding cartoon insect; 2) the "JR-15," a child-size version of the AR-15, that is marketed to "look, feel, and operate just like Mom and Dad's gun;" and 3) a book series featuring "Little Jake," a boy who uses his gun to bring down a bear and save an African village from a marauding elephant. The publisher of the books says Little Jake is actually older than he looks: "Little Jake is a fictional character in his late teens. While small in stature so that young children may relate to him, Little Jake is old enough to hunt and fish safely on his own without adult supervision." This bill seeks to prohibit firearm manufacturer and other industry members from targeting minors with advertisements for firearms and related products.

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). Because this firearms bill may be interpreted as a restriction on commercial speech, it is almost certain to face a constitutional challenge. (See *Nordyke v. Santa Clara County* (9th Cir. 2009) 110 F.3d 707, 710 (holding that "an offer to sell firearms or ammunition" is constitutionally protected commercial speech under the First Amendment to the United States Constitution).)

Proposed Law:

- Prohibits a firearm industry member from advertising, marketing, or arranging for placement of an advertising or marketing communication concerning any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.
- Requires a court when determining whether marketing or advertising of a firearm-related product is attractive to minors to consider the totality of the circumstances, including criteria specified in the bill.
- Prohibits a firearm industry member publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product.
- Provides that any person in violation is liable for a civil penalty not to exceed \$25,000 for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. Specifies criteria the court must consider in setting the amount of the monetary penalty.
- Authorizes a person harmed by a violation to commence a civil action to recover their actual damages.
- Authorizes the court to order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct.
- Entitles a prevailing plaintiff to reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.

- Deems each copy or republication of prohibited marketing or advertising a separate violation.
- Contains an urgency clause.
- Defines terms for purposes of the bill.

Related Legislation:

- SB 1327 (Hertzberg, 2022) establishes privately-enforced civil causes of action against any person who manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any firearm lacking a required serial number, assault weapon, .50 BMG rifle, or firearm precursor part, as specified. SB 1327 is pending in the Assembly Judiciary Committee.
- AB 452 (Friedman, 2022) requires local educational agencies to inform parents, through a notice, of California's child access prevention laws and other firearm laws. AB 452 is pending in this committee.
- AB 1594 (Ting, 2022) establishes a firearm industry standard of conduct, which would require a firearm industry member, as defined, to, among other things, establish, implement, and enforce reasonable controls, as defined, and adhere to specified laws pertaining to unfair methods of competition, unfair or deceptive acts or practices, or false advertising. The bill also prohibits a firearm industry member from manufacturing, marketing, importing, offering for wholesale sale, or offering 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, as specified. AB 1594 is pending in this committee.
- AB 1621 (Gipson, 2022), among other things, prohibits the sale, transfer, or possession of an unserialized firearm precursor part, except as specified, and explicitly prohibits the possession or transfer of a firearm without a serial number or mark of identification. AB 1621 is pending in this committee.

Staff Comments: Due to the likelihood that this bill could generate a constitutional challenge, the DOJ reported that its Governmental Law Section (GLS) require additional resources beginning in FY 2022-23 and concluding in FY 2025-26. Specifically, GLS would require 1.0 Deputy Attorney General and the legal complement of 1.0 Legal Secretary. In addition, the Consumer Protection Section (CPS), within the Public Rights Division anticipates an increase in workload investigating potential violations of the law as well as increased litigation of civil enforcement actions in state or federal court upon the enactment of AB 2571. To address the additional workload, CPS will require additional resources consisting of 1.0 Deputy Attorney General and the legal complement of 1.0 Legal Secretary, beginning in FY 2022-23 and ongoing.

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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