SENATE COMMITTEE ON INSURANCE
Senator Susan Rubio, Chair
2023 - 2024 Regular

Bill No:	SB 8	**Hearing Date:**	April 26, 2023
Author:	Blakespear		
Version:	March 23, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jill Rice		

SUBJECT: Firearms liability insurance

DIGEST: Requires a person who owns a firearm to obtain and continuously maintain a homeowner's, renter's, or gun liability insurance policy specifically covering losses or damages resulting from the use of that firearm.

ANALYSIS:

Existing law:

1) Requires any person who purchases or receives a firearm, as specified, to possess a firearm safety certificate;

2) Requires the Department of Justice to develop a written test required for the issuance of a firearm safety certificate; and

3) Makes the violation of specified requirements with regard to firearms a misdemeanor or a felony, as specified.

This bill:

1) Requires a person who owns a firearm to obtain and continuously maintain a homeowner's, renter's, or gun liability insurance policy specifically covering losses or damages resulting from the use of that firearm, including but not limited to, death or injury to another, including without limitation a household member, guest, or invitee, and property damage;

2) Specifies an insurer is not required to defend or indemnify the insured beyond the terms or limits of their policy;

3) Requires the owner of the firearm to keep valid and current written evidence of the coverage described in (1) at the location where the firearm is stored;

4) Becomes operative January 1, 2025;

5) Requires the Insurance Commissioner to develop, no later than December 31, 2024, a standard form of evidence of liability coverage for a policy of insurance that satisfies the requirements prescribed in this section; and

6) Requires the Insurance Commissioner to, no later than July 1, 2024, set minimum coverage requirements for the policies described in this section.

Background

According to the Author

> We currently have no system to adequately compensate victims of gun violence. Personal, financial, and medical costs of gun violence are borne by the victims and society at large. Insurance coverage plays a critical role in assessing risk and redistributing costs across many industries.
>
> Insurance coverage would promote safety by incentivizing safer gun storage practices. 75% of school shootings are from a gun that came from the home. The guns used in school shootings are de facto improperly stored given that the perpetrator was able to access them. Insurance coverage would incentivize insurance companies to require gun owners to safely store firearms, which would reduce the unintentional harmful uses of guns. Insurance requirements would align public policy goals with insurance company goals.
>
> The cost of gun violence in America is estimated to be a staggering $557 billion every year. Just the average hospital stay for a nonfatal gun injury costs more than $62,000, nearly equal to the 2019 United States' median household income ($68,703), which begs the question: "Can you afford to get shot?"
>
> While current law holds gun owners responsible for what happens with their guns, the cost of negligent or accidental shootings often exceeds what a gun owner can otherwise compensate.
>
> SB 8 would require those who choose to exercise their right to own a gun to carry an insurance policy for that gun. By doing so, it would ensure that the cost of damages potentially created by a negligent or accidental shooting with the gun would be at least partially covered.

<u>Insurance Basics</u>
There are different types of insurance that are offered and this bill deals with property and casualty. Property and casualty insurance are types of coverage that protect individuals and businesses from financial losses due to accidents, losses, and liability claims. Property insurance is specifically designed to provide financial protection for situations when an individual or company's assets or property are physically damaged or destroyed as a result of a covered loss, such as, fire, vandalism, or theft. Casualty insurance protects you for bodily injury and or property damage *you* cause to other people. In other words, liability or casualty coverage will pay for accidental damage you cause to another person or their property. There are three parties to a liability insurance contract: the insured is the first party; the insurance company is the second party (the insurer); and the injured party is the third party. To be legally liable, typically one must have demonstrated negligence—the failure to use proper care in personal actions.

Requirement for insurance coverage for harm caused by a firearm
This language of this bill may create a 'moral hazard'. Moral hazard generally refers to incentivizing actions that lead to increased risk exposure without needing to bear the full costs of that risk. As this relates to SB 8, a potential moral hazard could include a situation where a household member seeks to financially gain from the use of a firearm against another household member. For example, if the household is suffering financially, a household member may intentionally shoot another insured household member, though claim negligence/accident, with the intent to damage or destroy the limb in hopes of a financial settlement. Another example could involve some form of domestic violence, that results in a household member fatally shooting another, though claim negligence/accident, with the intention of collecting an insurance settlement under a homeowners policy, similar to a life insurance payout.

The committee may wish to consider the unintended consequences of incentivizing the cause of injury or death with firearms for the purpose of financial gain. While insurers may have various methods to protect against fraud, the potential cost on life or injury cannot be dismissed

Suggested Amendments

1) Push out operative and California Department of Insurance (CDI) dates. In order to give the CDI sufficient time to promulgate regulations which will be necessary to develop and adopt the standard form of liability coverage in (a) and the minimum coverage for requirements for a policy in (b) in Section 11627.6 the committee recommends changing the date by which the Insurance Commissioner must act to 2027 and 2026, respectively. In the absence of this change the CDI will likely have to adopt implementing regulations via the emergency regulations process. The committee also recommends changing the operative date to 2027 in (e) of Section 11627.5. Language requiring insurers to comply with the regulations adopted pursuant to this section is included for clarity. Further clarifying language that gives the Commissioner authority to adopt, amend, or repeal regulations to implement the provisions of this section is also included. The amendments will read as follows:

Page 3, Line 23 (e) This section shall become operative on January 1, ~~***2025***~~ **2027**.

Page 3, Line 25 ***11627.6.*** (a) The Commissioner shall, by no later than December 31, ~~**2024**~~ **2026**,

Page 3, Line 30 (b) The Commissioner shall, by no later than July 1, ~~**2024**~~ **2026**, set

add below Page 3, Line 32 **(c) An insurer writing coverage prescribed in Section 11627.5 shall comply with any standard adopted by the Commissioner pursuant to this section.**

(d) The Insurance Commissioner may, from time to time, adopt, amend, or repeal regulations to implement the provisions of this section.

2) Strike the language "from an insurer that is authorized to do business in this state." If an insured is unable to find an insurance policy, especially a gun liability policy,

within the admitted market they will very likely need to turn to the non-admitted market. The non-admitted insurance market refers to the segment of the insurance industry that provides coverage for risks that are considered too high or too unusual for traditional insurance companies to underwrite. Non-admitted insurers, also known as surplus lines insurers, are not licensed by the state in which they operate, and do not have the same regulatory oversight as traditional insurance companies. In California, the non-admitted insurance market includes coverage for gun liability insurance. This type of insurance provides protection against claims arising from the use of firearms, including accidental discharge, injury, or death resulting from the use of a gun, and damage to property caused by a gun. Because gun liability insurance is a specialized type of coverage, it is often obtained through the non-admitted insurance market. This is an important option that, with the current language, would not be an option for gun owners. The amendments will read as follows:

Page 3
Line10 (a) renter's, or gun liability *Line11* insurance policy ~~**from an insurer that is**~~
Line11 ~~**authorized to do business in this state**~~, specifically covering losses

3) Strike the word "the" and add the words "any negligent or accidental." Property and casualty insurance policies cover accidental events or occurrences only. Property and casualty insurance does not cover intentional behavior such as criminal assault.

   Covering intentional behavior that causes harm to others, or creating the conditions that lend to moral hazard, transforms the nature of insurance coverage. Insurers will not voluntarily insure intentionally harmful behavior. Forcing insurers to provide this insurance may expose insurers to new significant financial risk, at a time when the insurers already face a crisis in the homeowners insurance market due to the impacts of climate change.

   Therefore, the committee is proposing the following amendment:

Page 3

Line12 (a) or damages resulting from ~~**the**~~ **any negligent or accidental** use of that firearm,

4) Delete the language "household member." SB 8 would require insurers to further restructure their existing liability to cover a "household member". This language would constitute an expansion of policy coverage that would be in directly conflict with how insurance policies are structured. Household members are named individuals within the policy and thus are considered a first party. As such, these individuals are not permitted to recover financial damages under the liability portion of the policy, which is only available to cover first party insureds for damages they cause and that are legally owed to a third party. Instead, the economic costs of injuries (i.e., medical bills) sustained by a member of the same household should instead be covered under a health insurance policy. Mandating coverage for gun-related injuries under a homeowners policy for a household member would result in duplicate coverage. Therefore, the committee agrees and suggests the following amendment:

Page 3
Line 14 limitation a ~~**household member**~~, guest, or invitee, and property

5) Delete the phrase "without limitation." Gun owner liability insurance obtained via a homeowner's, renter's, or gun liability policy will not cover all losses. Instead, coverage in these policies is currently limited in several ways: (1) the coverage limit of the individual policy; (2) the relation of the person who was injured to the gun owner (i.e. family members and cohabitants are not covered by a standard homeowner's or presumably a renter's policy); and (3) the type of act causing the harm. No insurance policies, including a stand-alone gun liability policy, cover damages caused by the criminal use of a firearm. Therefore, it appears that the only damages covered by a policy would be damages resulting from accidental or negligent use of a firearm.

   Limitations to such damages are essential to a functioning insurance market. Therefore, the committee recommends deleting the language "without limitation." To operate without limitations would so thoroughly disrupt the insurance market and make assessing, predicting, and calculating risk for the policy, insurance companies would stop writing such policies. Therefore, the committee suggests the following amendment:

Page 3
Line 13 not limited to, death or injury to another, including ~~**without**~~
Line 14 ~~**limitation**~~ a household member, guest, or invitee, and property

6) Include exemptions. As one of the stated goals of this bill, gun safety is essential. Therefore, exemptions for those who have undergone extensive training and have a demonstrated and repeated record of safety and competence with the firearm makes sense. The following provisions are very narrowly crafted to include only those persons designated as peace officers pursuant to Chapter 4.5 of Title 3 of Part 2 of the California Penal Code (§830 et seq.), including sworn peace officers, active reserve peace officers and retired peace officer.

Page 3
Line 23
(e) The provisions of Article shall not apply to any of the following:
(i) Those persons designated as peace officers pursuant to Chapter 4.5 of Title 3 of Part 2 of the California Penal Code (§830 et seq.), including sworn peace officers, active reserve peace officers and retired peace officers.
~~**(e)**~~ **(g)** This section shall become operative

7) Gun safety in the home begins with safe storage of that gun. According to the author, "Insurance coverage would promote safety by incentivizing safer gun storage practices. 75% of school shootings are from a gun that came from the home. The guns used in school shootings are de facto improperly stored given that the perpetrator was able to access them." The goal with any safe storage law is to change behavioral norms and to incentivize safe storage to prevent gun violence. There is a role that insurers can play here to protect families, and it can also benefit

them. While most homeowners policies cover firearms under property with a limit for theft. They are silent on personal or family liability for firearm negligence. It is already standard practice for insurers to adjust rates based on risk or decide not to offer coverage for trampolines or aggressive dog breeds, or to require measures to ameliorate risk such as fencing for a swimming pool, or removing moss from a roof. Insurers could apply similar principles as auto insurers who incentivize safe driving through lower premiums and vanishing deductibles.

Therefore, the committee is recommending the following language be added to page 3 after (d) as a new subsection (f)

(f) Upon issuance of the policy and no less than once annually, the insurer shall conduct a written or electronic survey of the insured with the intent of increasing the policy holder's gun safety in the home. The survey shall include, at minimum, questions that inquire as to whether the firearm is stored securely, the type of secure storage, whether the firearm is stored unloaded, and whether the ammunition is stored in a separated and secure location.

Related/Prior Legislation

SB 505(2022) (Skinner) This bill would have made a firearm owner strictly civilly liable for each incidence of property damage, bodily injury, or death resulting from the use of their firearm. The bill would have additionally required a firearm owner to obtain and continuously maintain a homeowner's, renter's, or gun liability insurance policy specifically covering losses or damages resulting from any negligent or accidental use of that firearm, including, but not limited to, death, injury, or property damage.

ARGUMENTS IN SUPPORT:

According to the Catholic Conference, requiring firearm liability insurance would help reduce the harm and damages guns pose to families - through suicide, homicide, and accidental injury – and can help owners take necessary steps to protect their loved ones.

The City of San José argues that gun liability insurance encourages gun owners through financial incentives to engage in safer gun ownership behaviors, much the same way that car insurance rewards safe driving. Further, in most instances, gun owners can comply with this insurance requirement under existing homeowner's or renter's insurance, or rapidly expanding gun liability insurance.

ARGUMENTS IN OPPOSITION:

American Property Casualty Insurance Association (APCIA), the National Association of Mutual Insurance Companies (NAMIC), the Pacific Association of Domestic Insurance Companies (PADIC), and the Personal Insurance Federation of California (PIFC) collectively referred to as "The Trades" raise three arguments in opposition to this bill. 1) By requiting liability coverage to a "household member," this would not only be an expansion of policy coverage, it would directly conflict with how insurance policies are structured; 2) SB 8 would create a 'moral hazard;' and 3) This bill's language is too

broad and suggests coverage of intentional acts. Consequently, introducing such an expansion of coverage would fundamentally rework insurance.

The Wildlife Conservations Organizations argue that SB 8 would do nothing to reduce criminal use of firearms, but would unlawfully tax California's law-abiding hunters and shooters, impact our wildlife and their habitats, and disproportionately affect disadvantaged communities and the ability of the economically challenged to keep themselves and their families safe.

The Peace Officers' Research Association of California states that existing law requires that any person who purchases or receives a firearm must possess a firearm safety certificate; meaning gun owners are aware and taught the proper safety protocols required to be a responsible gun owner. They contend that SB 8 targets responsible gun owners by requiring them to pay added costs for insurance policies that may not exist currently and may likely be exorbitant once they were offered by insurance companies.

SUPPORT:

Fund Her
The California Catholic Conference
The City of San José
The Consumer Attorneys of California

OPPOSITION:

American Property Casualty Insurance Association
Arcadia Police Officers' Association
Black Brant Group
Burbank Police Officers' Association
Cal-Ore Wetlands and Waterfowl Council
California Association of Highway Patrolmen
California Bowmen Hunters/State Archery Association
California Chapter Wild Sheep Foundation
California Deer Association
California Hawking Club
California Houndsmen for Conservation
California Rifle and Pistol Association, Inc.
California Waterfowl Association
Claremont Police Officers' Association
Congressional Sportsmen's Foundation
Corona Police Officers' Association
Culver City Police Officers' Association
Deputy Sheriffs'' Association Monterey County
Ducks Unlimited
Golden Gate Chapter - Safari Club International
Gun Owners of California
Murrieta Police Officers' Association
National Association of Mutual Insurance Companies
Newport Beach Police Association

Nor-Cal Guides and Sportsmen's Association
Pacific Association of Domestic Insurance Companies
Palos Verdes Police Officers' Association
Peace Officers' Research Association of California
Personal Insurance Federation of California
Placer County Deputy Sheriffs'' Association
Riverside Police Officers' Association
Pomona Police Officers' Association
Riverside Sheriffs' Association
Rocky Mountain Elk Foundation
Sacramento Chapter - Safari Club International
Safari Club International - California Chapters
San Diego County Wildlife Federation
San Francisco Bay Area Chapter - Safari Club International
Santa Ana Police Officers' Association
Suisun Resource Conservation District
Tulare Basin Wetlands Association
Upland Police Officers' Association

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