
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1227 **Hearing Date:** June 28, 2022
Author: Levine
Version: June 21, 2022
Urgency: Yes **Fiscal:** Yes
Consultant: AB

Subject: *Firearms and ammunition: excise tax*

HISTORY

Source: Author

Prior Legislation: AB 1223 (Levine, 2021), failed on Assembly Floor
AB 18 (Levine, 2019), held in Assembly Appropriations
AB 1603 (Wicks), Ch. 735, Stats. of 2019
AB 1669 (Bonta), Ch. 736, Stats. of 2019

Support: California Partnership for Safe Communities; City of Oakland - Department of Violence Prevention; City of Richmond -- Office of Neighborhood Safety (ONS); Equal Justice USA; Everytown for Gun Safety Action Fund; Giffords; Johns Hopkins Center for Gun Violence Solutions; Moms Demand Action for Gun Sense in America; Movement 4 Life; San Diegans for Gun Violence Prevention; Shaphat Outreach; Southern California Crossroads; Students Demand Action for Gun Sense in America; The Health Alliance for Violence Intervention; Urban Peace Institute; Youth Alive!

Opposition: Black Brant Group, the; Cal-ore Wetlands and Waterfowl Council; 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 State Chapter - National Wild Turkey Federation; California Waterfowl Association; Congressional Sportsmen's Foundation; Delta Waterfowl; Golden Gate Chapter - Safari Club International; National Rifle Association - Institute for Legislative Action; Nor-cal Guides and Sportsmen's Association; Peace Officers Research Association of California (PORAC); Rocky Mountain Elk Foundation; Safari Club International - California Chapters; San Diego County Wildlife Federation; San Francisco Bay Area Chapter - Safari Club International; Suisun Resource Conservation District; Tulare Basin Wetlands Association

Assembly Floor Vote: Not Applicable

PURPOSE

The purpose of this bill is to impose an excise tax on the sale of new firearms, ammunition, and firearm precursor parts, at a specified rate contingent upon the type of item being sold. Additionally, this bill creates the Gun Violence Prevention, Healing and Recovery Fund, into which the proceeds of the tax will be deposited for the purposes of gun violence prevention programs, education and research.

Existing federal law imposes a 10% tax on the manufacturer, producer, or importer of a pistol or revolver. (26 U.S.C. § 4181).

Existing federal law imposes a 11% tax on the manufacturer, producer, or importer of a firearm other than a pistol or revolver and on shells and cartridges. (*Ibid.*)

Existing state law, the California Constitution, states that the Legislature may provide for property taxation of all forms of tangible personal property, and by two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. (Cal. Const., Art. XIII, § 2.)

Existing law authorizes the Department of Justice (DOJ) to require firearms dealers to charge each firearm purchaser a fee not to exceed \$1, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index. (Pen. Code, § 28225(a).)

Existing law provides that the fee in Penal Code §28225(a) shall be no more than is necessary to fund specified governmental notification and reporting functions. (Pen. Code, § 28225(b).)

Existing law authorizes DOJ to require each dealer to charge each firearm purchaser or transferee a transfer fee not to exceed one dollar (\$1) for each firearm transaction, and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen. Code, § 23690.)

Existing law authorizes DOJ to require firearms dealers to charge each person who obtains a firearm a fee not to exceed five dollars (\$5) for each transaction, and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen. Code, § 28300.)

Existing law requires the DOJ to recover its costs under specified provisions related to the sale of ammunition by charging the ammunition transaction or purchase applicant a fee not to exceed the fee charged for its DROS process, as described in Penal Code Section 28225, and not to exceed the DOJ's reasonable costs. (Pen. Code, § 30370(c).)

Existing law authorizes a certified instructor of the firearm safety test to charge a fee of twenty-five dollars (\$25), fifteen dollars (\$15) of which is to be paid to DOJ to cover its costs in carrying out and enforcing firearms laws. (Pen. Code, § 31650.)

Existing law requires other various fees to be paid to the Department of Justice at the time of a firearm or ammunition purchase. (Pen. Code, § 28200, et. seq.)

Existing law imposes an eighteen cent (\$0.18) tax on each gallon of fuel sold in the state. ((Rev. and Tax. Code, § 7360.)

Existing law imposes taxes on cigarettes. (Rev. and Tax Code §§ 30101, et. seq.)

Existing law imposes taxes on cannabis. (Rev. and Tax. Code §§ 34010, et. seq.)

This bill establishes several legislative findings and declarations, including, in part:

- Gun violence is a public health crisis, and preventing gun violence and delivering community peace and safety to all Californians is a matter of racial justice.
- People who have been victims of violence are also at substantially higher risk of being violently reattacked or killed, and gun violence imposes enormous harms on those who are not direct victims as well.
- In addition to this enormous human toll, gun violence also causes economic harm in impacted communities and imposes enormous fiscal burdens on state and local governments and taxpayers.
- Since the beginning of the COVID-19 pandemic, there has been an unprecedented surge in firearm and ammunition sales across the nation, which has occurred alongside an unprecedented nationwide spike in shootings and gun homicides.
- Firearms, ammunition, and firearm precursor parts sold by licensed dealers and vendors of these products contribute to high rates of gun violence, and broader human, mental health, and economic harms.
- The excise tax on firearm retailers proposed in this act is analogous to longstanding federal law, which has, since 1919, placed a 10 to 11 percent excise tax on the sale of firearms and ammunition by manufacturers, producers, and importers.
- The tax specified in this act is a modest and reasonable excise tax on sellers whose lawful and legitimate commercial activity still imposes enormous harmful externalities on California’s families, communities, and taxpayers. The modest tax proposed in this measure mirrors the federal excise tax on other firearm and ammunition industry participants and is similarly unlikely to discourage lawful sales and commerce in firearms, ammunition, or firearm precursor parts

This bill defines the terms “ammunition,” “ammunition vendor,” “firearm,” “firearm precursor part,” “firearm precursor part vendor,” and “licensed firearms dealer” by reference to specified Penal Code provisions defining those terms.

This bill defines “law enforcement agency” as any department or agency of the state or of any county, city, or other political subdivision thereof that employs any peace officer who is authorized to carry a firearm while on duty, or any department or agency of the federal government or a federally recognized Indian tribe with jurisdiction that has tribal land in

California, that employs any police officer or criminal investigator authorized to carry a firearm while on duty.

This bill defines “peace officer” as any person described in specified provisions of the Penal Code who is authorized to carry a firearm on duty, or any police officer or criminal investigator employed by the federal government or a federally recognized Indian tribe with jurisdiction that has tribal land in California, who is authorized to carry a firearm while on duty.

This bill defines “sales price” by reference to an existing definition in the Revenue and Taxation Code.

This bill establishes the Gun Violence Prevention, Healing and Recovery Fund in the State Treasury, and requires all moneys in the fund to be used to fund gun violence prevention programs, education and research.

This bill, commencing July 1, 2023, imposes an excise tax upon licensed firearms dealers, ammunition vendors, and firearm precursor part vendors, at the rate of 10 percent of the sales price of a handgun, and 11 percent of the sales price of a long gun, rifle, firearm precursor part, and ammunition sold in this state.

This bill exempts sales of firearms, ammunition, or firearm precursor parts to a peace officer or law enforcement agency employing that peace officer, for use in the normal course of employment.

This bill prescribes the manner in which the Department of Tax and Fee Administration (CDTFA) shall administer and collect the taxes, and authorizes CDTFA to adopt and enforce rules and regulations relating to its provisions.

This bill provides that the taxes imposed by its provisions are due and payable to the CDTFA on or before the last day of the month next succeeding each quarterly period of three months, and that on or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the CDTFA electronically.

This bill requires all proceeds of the excise tax imposed by its provisions to be deposited in the Gun Violence Prevention, Healing and Recovery Fund.

This bill provides that its provisions shall not be construed to preclude or preempt a local ordinance that imposes any additional requirements, fee, or surtax on the sale of firearms, ammunition, or firearm precursor parts. The tax imposed by this part shall be in addition to any other tax or fee imposed by the state, or a city, county, or city and county.

This bill specifies that if any provision contained therein is declared unconstitutional, invalid or unenforceable, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions.

This bill contains an urgency clause.

COMMENTS

1. Need for This Bill

According to the Author:

“Despite comparatively strict gun laws, California could end up with one of the highest yearly incidents of gun violence and gun related deaths in state history according to the Gun Violence Archive. Gun violence not only imposes an immeasurable toll on human and mental health within impacted communities; it also produces its own economic burdens for state and local law enforcement, court expenses, and medical resources, and indirectly impacts home values and profitability for local businesses.

AB 1227 initiates an important, long-term investment in reducing the various harms caused by guns across California. It establishes the Gun Violence Prevention, Healing, and Recovery Fund within the State Treasurer’s Office, which will be used for gun violence education, research, and prevention programs. This bill maintains the fund by imposing a modest excise tax of 10-11% on retailers—not consumers—on the sale of firearms, firearm precursor parts, and ammunition. AB 1227 mirrors the federal excise tax on other firearm and ammunition industry participants and is similarly unlikely to discourage lawful sales and commerce of firearms, ammunition, or firearm precursor parts. However, licensed sales of firearms, ammunition, and precursor contribute to high rates of gun violence through straw purchases, trafficking to illicit markets, theft, or other negligent losses, and AB 1227 will ensure a reliable source of funding to address the continuing impacts of gun violence.”

2. Excise Taxes in California and Effect of This Bill

An excise tax is a tax imposed on a specific good or activity, and generally related to the manufacture, sale or consumption of specific commodities, or licenses to pursue certain occupations. A subset of excise taxes are known as “sin” or “vice” taxes, and are levied on specific goods believed to be harmful to society and individuals, such as alcohol, tobacco and gambling, among other things. Sin taxes are generally intended to lower demand for the targeted good by increasing its price. California imposes excise taxes – many of which may be considered “sin” taxes – on several types of goods including gasoline, cigarettes, cellphones and cannabis. Even though excise taxes are collected from businesses, virtually all California merchants pass on the excise tax to the customer through higher prices for the taxed goods. This bill imposes a new excise tax on licensed vendors of firearms, ammunition and precursor parts, at a rate of either 10% or 11% depending on the item sold.

Based on the findings and declarations included in the bill, it is evident that this tax is not intended to operate as a sin tax, discouraging the sale and purchase of firearms, ammunition and precursor parts: “The modest tax proposed in this measure mirrors the Pittman-Robertson federal excise tax on other firearm and ammunition industry participants and is similarly unlikely to discourage lawful sales and commerce in firearms, ammunition, or firearm precursor parts.” The

provision establishing this finding also cites research suggesting that moderate tax increases on guns or ammunition would do little to disrupt hunting or recreational gun use.¹

Rather, this tax more closely resembles what is known as a Pigovian tax, or one intended to correct for the negative externalities caused by a specific market activity – in this case, societal costs related to the sale of firearms, ammunition and precursor parts. Generally, Pigovian taxes are calculated by assessing the marginal costs of these negative externalities, which, in the case of firearms, would be equal to losses – like injury, death, and lost wages – resulting from crimes, accidents and suicides. This bill, however, takes a different approach and sets the rate of the tax imposed on firearm sales to resemble an existing federal tax on firearm and ammunition. That tax, established by the Federal Aid in Wildlife Restoration Act of 1937² (also known as the Pittman-Robertson Act), imposes an 11% levy on firearms, ammunition and archery equipment and distributes the proceeds to state governments for wildlife-related projects. Proceeds from that tax generate tens of millions of dollars annually for conservation efforts across California.

Unlike the Pittman-Robertson Act, this bill seeks to establish a tighter nexus between the tax it imposes and the target of the proceeds it generates. Specifically, the proceeds of the tax imposed under this bill would be directed exclusively toward gun violence prevention programs, education and research. The bill, however, specifies no further details regarding these objectives.

3. Existing Fees Related to Firearm, Ammunition and Precursor Part Purchases

California currently imposes several fees related to the purchase of a new firearm in the state. The total state fee for a firearm purchase is \$37.19, the bulk of which consists of the Dealer Record of Sale (DROS) fee, which covers the costs of the required background check prior to purchase. The DROS fee also funds several firearm-related responsibilities of the Department of Justice, including enforcement efforts and management of the Armed Prohibited Persons System. The balance of the state fee consists of a \$1.00 Firearms Safety Act Fee and a \$5.00 Safety and Enforcement Fee. These fees are imposed on the vendors but are generally paid by the purchasers. Additionally, in the event of a private party transfer, a firearms dealer may charge an additional fee of up to \$10.00 per firearm.

4. Second Amendment

The Second Amendment to the U.S. Constitution provides, “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.” In *District of Columbia v. Heller*, the U.S. Supreme Court held that the 2nd Amendment protects a personal right to keep and bear arms for lawful purposes, especially in one’s home.³ Since *Heller*, the circuit courts have largely applied a two-step inquiry to determine whether a particular law is constitutional. First, courts ask whether the challenged law burdens conduct protected by the Second Amendment. If it does not, the inquiry ends, as the law does not implicate the Second Amendment. But if the challenged law does burden conduct protected by the Second Amendment, courts next ask whether, under the applicable standard of scrutiny, the law is constitutional. However, the Court in *Heller* noted that courts and commentators throughout history have “routinely explained that the right [secured by the Second Amendment]

¹ <https://www.rand.org/research/gun-policy/analysis/essays/firearm-and-ammunition-taxes.html>

² 26 U.S.C. 4181

³ *District of Columbia v. Heller* (2008) 554 U.S. 570, 630-31.)

was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”⁴ Furthermore, the Court observed that certain regulations restricting access to firearms were “longstanding” and “presumptively lawful,” including restrictions on possessing and selling certain types of weapons, and conditions on the commercial sale of firearms.⁵

Regarding taxes, generally, while the Supreme Court usually “declines to closely examine the regulatory motive or effect of revenue-raising measures,” they have noted a point at which a tax becomes “a mere penalty with the characteristics of regulation and punishment.”⁶ In the context of firearms, the longevity of the tax imposed by the Pittman-Robertson Act, which has evaded or withstood legal challenge for over 100 years, strongly suggests that firearm taxes do not run afoul the Second Amendment, provided they do not make firearm so infeasible as to burden the rights that amendment protects. Thus, it appears that this bill, which imposes a tax in line with the Pittman-Robertson tax, does not infringe upon Second Amendment rights.

5. An Urgent Matter

This bill includes an urgency clause, requiring a 2/3 vote of each house. According to the bill, the facts constituting the necessity of an urgency clause are:

California is facing a public health crisis due to gun violence. According to the Gun Violence Archive, in the first five months of 2022, there have been at least 240 mass shootings in America. From January 1, 2022, to June 1, 2022, a total of 18,844 Americans were killed due to gun violence. It is necessary for this act to take effect immediately in order to address this ongoing public health crisis at the earliest possible time.

Even without the urgency clause, the bill would require a 2/3 vote. The California Constitution provides that the Legislature may impose taxes on all forms of tangible personal property, and that personal property may be reclassified for differential taxation or for exemption upon a 2/3 vote of both houses.⁷

6. Multiple Attempts

AB 1227 was amended on May 5, 2022 to remove its existing contents, relating to building energy efficiency standards, and include provisions related to an excise tax on firearms. The Author introduced substantially similar measures last year (AB 1223) and in 2019 (AB 18), both of which failed to advance out of the Assembly.

⁴ *Id.* at 626.

⁵ *Id.* at 626-627

⁶ *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 573 (2012); *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 38 (1922).

⁷ Cal. Const. Art. XIII, Sec. 2.

7. Argument in Support

According to the Giffords Law Center to Prevent Gun Violence:

“As the findings for AB 1227 recognize, in addition to its brutal human toll, gun violence also causes enormous economic harm and imposes enormous fiscal burdens on state and local governments and taxpayers. A report from the National Institute for Criminal Justice Reform in 2020 determined that each firearm homicide in Stockton, California cost taxpayers at least \$2.5 million in direct government costs such as medical, law enforcement, court expenses, and lost tax revenue; nonfatal shootings with a single suspect were also estimated to directly cost taxpayers nearly \$1 million on average. A 2021 report by Everytown for Gun Safety found that gun deaths and injuries cost California \$22.6 billion annually, of which \$1.2 billion is paid directly by taxpayers every year. Gun violence also imposes broader indirect costs in the form of reduced home values and reduced profitability for local businesses. A report by the Urban Institute found that each additional homicide in a census tract in Oakland, California, was “significantly associated with five fewer job opportunities among contracting businesses (businesses losing employees) the next year.”

To promote community safety and mitigate the enormous collateral harms that flow from firearm industry commerce, California has in recent years acted to invest in violence intervention initiatives that work to interrupt entrenched cycles of shootings, trauma, and retaliation. These programs support and heal victims of firearm violence, and provide targeted intervention services to other individuals identified as highest risk of being shot or involved in cycles of violence in the near future. The state’s investment in these programs, primarily through the California Violence Intervention and Prevention (CalVIP) grant program, has provided a critical lifeline to *temporarily* sustain and expand programs employing frontline violence intervention workers and saving lives today.

However, these investments have thus far relied on short-term General Fund commitments. Sustained reductions in gun violence will require sustained investments in prevention and intervention efforts and longer-term planning to entrench virtuous cycles of trauma recovery, retaliation prevention, peace-building, and safety. That is why it has been a top priority for our organizations to establish a dedicated revenue stream to sustain this lifesaving work through the California Violence Intervention and Prevention program and related efforts.

We believe this legislation would provide a reasonable and appropriately targeted means of securing sustained revenue for these purposes, to make our state safer and freer from gun violence for all who call it home.”

8. Argument in Opposition

According to the California Rifle and Pistol Association:

AB 1227 seeks to impose an excise tax in the amount of 10% of the sales price of a handgun and 11% of the sales price of a long gun, firearm precursor part, and ammunition to fund your “Gun Violence Prevention, Healing, and Recovery Fund.”

This bill failed in the 2019 session as AB 18. At that time the author stated the annual cost estimates from gun violence in the United States reach \$229 billion. These costs are caused by *criminals*, not the individuals AB 1227 seeks to tax. Assembly Member Levine tried again and failed in the 2021-2022 legislative session. AB 1223 could not pass the Assembly Floor even though his party holds a supermajority. Gutting and amending a “Building Energy Efficiency Standard” bill to circumvent the review process of half the legislature, and to bypass the Assembly where AB 1223 previously could not get the votes, denies the people their right to be heard and the transparency we all deserve. It is reprehensible to stoop so low as to use this backhanded, under-cover of darkness, tactic. This type of tactic should be beneath any legislator, not to mention one running for the state-wide office of Insurance Commissioner.

We stand with law enforcement throughout California and put the safety of our communities and schools first. However, we oppose taxing millions of law-abiding citizens for the actions of criminals who compose a fraction of a percent of the population who are not law-abiding. Firearms and ammunition sales already bring millions of dollars of sales tax into California’s state budget each year. Many communities throughout California already collect over 10% in sales tax alone. Additionally, an average of \$40 million are made available for conservation and education efforts in California each year from an 11% federal excise tax imposed on the sale of sporting arms and ammunition (Pitman Robertson Act). Furthermore, the proposed tax, which clearly impedes constitutionally-protected activity, raises serious legal questions as to whether funds raised in this manner can be spent on this kind of policy.

Case law makes it clear states may not impose a charge for the enjoyment of a right granted by the federal Constitution and a person cannot be compelled to purchase, through a fee or tax, the privilege freely granted by the Constitution. This type of tax scheme has been repeatedly struck down in multiple jurisdictions. A marriage license tax being used to fund shelters for victims of domestic violence was recently struck down on similar grounds. In that case, the court pointed that a statute cannot violate the Constitution no matter how desirable or beneficial the legislation may be.

Under the law, a state may only impose taxes in connection with the exercise of a constitutional right when those fees are designed to recoup the costs incurred in administering a regulatory regime to which the taxpayer is subjected. This tax neither recoups the costs of legitimate firearm regulation nor does it fund efforts to benefit firearms consumers generally. The money is being used instead to create your new “Gun Violence Prevention, Healing, and Recovery Fund.” Again, we support crime prevention and victim support, but not funding it on the backs of law-abiding gun owners. It is therefore our view that these additional taxes are unjustified and unlawful.