
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 28 **Hearing Date:** July 11, 2023
Author: Gabriel
Version: June 26, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms and ammunition: excise tax*

HISTORY

Source: Author

Prior Legislation: AB 1227 (Levine, 2022), failed on Senate Floor
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: American Association of University Women – California; Antioch Police Department; Board of Supervisors for The City and County of San Francisco; Brady United Against Gun Violence, Ventura County Chapter; California Partnership to End Domestic Violence; California Women’s Law Center; City of Alhambra; City of Sacramento; City of San Diego; City of San Jose; County of Santa Clara; Darrell Steinberg, Mayor of Sacramento; Democratic Central Committee Siskiyou County; Democratic Party of Contra Costa County; EMS Medical Directors Association of California (EMDAC); Family Violence Law Center; Greater Sacramento Urban League; Initiate Justice; Kern County Democratic Party; Office of Los Angeles Mayor Karen Bass; Prosecutors Alliance California; Reach Out; Sacramento County Young Democrats; San Diego City Attorney's Office; San Mateo County Democracy for America; San Mateo County Democratic Party; Smart Justice California; Solano County Democratic Central Committee; United Nurses Associations of California/union of Health Care Professionals; Valoralifornia / Valor; Weave; Westchester/playa Democratic Club; Women Against Gun Violence; Women Democrats of Sacramento County; Woodland Police Department

Opposition: Black Brant Group; 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; Ducks Unlimited; Golden Gate Chapter - Safari Club International; Gun Owners of California, INC.; National Rifle Association - Institute for Legislative Action; Nor-cal Guides and Sportsmen's 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; Suisun Resource Conservation District; Tulare Basin Wetlands Association; 1 individual.

Assembly Floor Vote:

56 - 17

PURPOSE

The purpose of this bill is to impose upon state-licensed firearm dealers, firearm manufacturers and ammunition vendors an excise tax in the amount of 11% of the gross receipts from the retail sale of a firearm, firearm precursor part, and ammunition. The bill also requires that moneys collected via the tax be used to fund various gun violence prevention, education and research programs, as specified.

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 declares the Legislature's intent:

- a) To develop community violence prevention and conflict resolution programs, in the state, based upon the recommendations of the California Commission on Crime Control and Violence Prevention, that would present a balanced, comprehensive educational, intellectual, and experiential approach toward eradicating violence in our society; and,
- b) That these programs shall be regulated, and funded pursuant to contracts with the OES. (Pen. Code, § 14112.)

Existing law states that first priority shall be given to programs that provide community education, outreach, and coordination, and include creative and effective ways to translate the recommendations of the California Commission on Crime Control and Violence Prevention into practical use in one or more of the following subject areas:

- a) Parenting, birthing, early childhood development, self-esteem, and family violence, to include child, spousal, and elderly abuse;
- b) Economic factors and institutional racism;
- c) Schools and educational factors;
- d) Alcohol, diet, drugs, and other biochemical and biological factors;

- e) Conflict resolution; and,
- f) The media. (Pen. Code, § 14114, subd. (a).)

Existing law provides that first priority programs may additionally provide specific direct services or contract for those services in one or more of the program areas as necessary to carry out the recommendations of the commission when those services are not otherwise available in the community and existing agencies do not furnish them. (Pen. Code, § 14115.)

Existing law provides that second priority shall be given to programs that conform to the same requirements as first priority programs, except that the educational component shall not be mandatory in each subject area, but shall be provided in at least three of those areas, and the programs shall provide specific direct services or contract for services in one or more program areas. (Pen. Code, § 14116.)

Existing law provides that each program shall have a governing board or an interagency coordinating team, or both, of at least nine members representing a cross section of existing and recipient, community-based, public and private persons, programs, agencies, organizations, and institutions. Specifies the duties of the governing board or coordinating team. (Pen. Code, § 14117.)

Existing law requires the OES to prepare and issue written program, fiscal, and administrative guidelines for the contracted programs that are consistent with this title, including guidelines for identifying recipient programs, agencies, organizations, and institutions, and organizing the coordinating teams. (Pen. Code, § 14118, subd. (a).)

Existing law requires OES to promote, organize, and conduct a series of one-day crime and violence prevention training workshops around the state, as specified. (Pen. Code, § 14119.)

Existing law establishes CalVIP, to be administered by the Board of State and Community Corrections. (Pen. Code, § 14131, subd. (a).)

Existing law states that the purpose of CalVIP is to improve public health and safety by supporting effective violence reduction initiatives in communities that are disproportionately impacted by violence, particularly group-member involved homicides, shootings, and aggravated assaults. (Pen. Code, § 14131, subd. (b).)

Existing law defines several relevant terms, including “ammunition” (Pen. Code, §16150), “ammunition vendor (Pen. Code, § 16151), “firearm” (Pen. Code, § 16520), “firearm precursor part (Pen. Code, § 16531), “handgun (Pen. Code, § 16640), “long gun,” and “rifle” (Pen. Code, § 17090).

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.)

Existing law defines “gross receipts” as the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of several specified costs or taxes. (Rev. and Tax Code § 6012.)

This bill contains several findings and declarations regarding gun violence, existing firearm regulations and the firearm industry in the United States.

This bill contains several definitions for terms used therein, including:

- “Ammunition,” “ammunition vendor,” “firearm,” “firearm precursor part,” “handgun,” “long gun,” and “rifle” all have the same meaning as those terms are defined in the relevant Penal Code sections.
- “Department” means the California Department of Tax and Fee Administration
- “Firearms Manufacturer” means any entity licensed to manufacture firearms pursuant to existing federal law that engages in any retail sale of a firearm or firearm precursor part to a consumer in California.

- “Gross receipts” has the same meaning as that term is defined in the Revenue and Taxation Code.
- “Law Enforcement Agency” means 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.
- “Licensed firearms dealer” has the same meaning as the relevant section of the Penal Code.
- “Peace officer” means any person described in specified sections 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.
- “Retail sale” has the same meaning as that term is defined in the Revenue and Taxation Code.

This bill establishes the Gun Violence Prevention, Healing and Recovery Fund in the State Treasury to receive money collected via the tax imposed by the bill, and requires the funds to be annually allocated in the following order:

- The first \$75 million to be continuously appropriated to the Board of State and Community Corrections (BSCC) for the California Violence Intervention and Prevention (CalVIP) Grant Program, to fund CalVIP Grants, administration and evaluations of CalVIP-supported programs.
- The next \$50 million, or as much as is available and only by appropriation by Legislature, to the State Department of Education to fund school mental health and behavioral services and school safety measures, and for physical security safety assessments.
- The next \$15 million, or as much as is available and only by appropriation by Legislature, to the Judicial Council to support a court-based firearm relinquishment grant program to ensure the consistent and safe removal of firearms from individuals who are prohibited from owning or possessing firearms and ammunition pursuant to court order.
- The next \$15 million, or as much as is available and only by appropriation by Legislature, to the Department of Justice for a justice for victims of gun violence program to support evidence-based activities to equitably improve investigations and clearance rates in firearm homicide and firearm assault investigations in communities disproportionately impacted by firearm homicides and firearm assaults.

- The next \$2.5 million, or as much as is available and only by appropriation by Legislature, to the Department of Justice to support activities to inform firearm and ammunition purchasers and firearm owners about gun safety laws and responsibilities.
- The next \$2.5 million, or as much as is available and only by appropriation by Legislature, to the Office of Emergency Services to provide counseling and trauma-informed support services to direct and secondary victims of mass shootings and other gun homicides and to individuals who have experienced chronic exposure to community gun violence.
- The next \$1 million, or as much as is available and only by appropriation by Legislature, to the University of California, Davis, California Firearm Violence Research Center, if accepted by the Regents of the University of California, for a one-time grant for gun violence research and initiatives to educate health care providers and other stakeholders about clinical tools and other interventions for preventing firearm suicide and injury. The bill provides this allocation may be made over the course of more than one budget year, but cannot exceed \$1 million.

This bill provides that any remaining moneys available in the fund each year after the allocations above shall, by appropriation of the Legislature, be allocated to fund and support activities and programs focused on preventing gun violence, supporting victims of gun violence, and otherwise remediating the harmful effects of gun violence.

This bill provides, commencing July 1, 2024, that an excise tax shall be imposed upon licensed firearms dealers, firearms manufacturers, and ammunition vendors, at the rate of 11 percent of the gross receipts from the retail sale in this state of any firearm, firearm precursor part, or ammunition.

This bill exempts from this tax the sale of any firearm, ammunition, or firearm precursor part to any active or retired peace officer or any law enforcement agency employing that peace officer, as well as sales made by firearms dealers, firearms manufacturer, or ammunition vendors with gross receipts of less than \$5,000 in any quarterly period.

This bill directs the CDTFA to administer and collect the taxes pursuant to the Fee Collections Procedures Law, and authorizes the department to adopt regulations, including emergency regulations to implement the bill.

This bill provides that the taxes imposed by its provisions are due and payable to the department quarterly 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 department using electronic media.

This bill provides that each licensed firearms dealer, firearms manufacturer or ammunition vendor subject to the tax shall register with the department using electronic media and provide specified information, and that the department shall issue a permit to each eligible applicant that has registered, which is valid until revoked.

This bill provides that if a permit holder fails to comply with any provision or the bill or related regulation, the department shall provide notice in writing of no less than 10 days specifying the

time and place of hearing and requiring the permitholder to show cause why their permit should not be revoked, and prescribes the manner of service.

This bill provides that the department may, after notice and hearing, revoke a permit due to a violation or omission.

This bill includes a process by which a permitholder who has had their permit revoked may have their permit reinstated.

This bill provides that it 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, and its tax is imposed in addition to any other tax or fee imposed by the state, or a city, county, or city and county.

This bill authorizes CDTFA to issue regulations, including emergency regulations pursuant to the Administrative Procedures Act. Specifically, if any provision of the bill or its application is held invalid, the bill allows CDTFA to issue guidance or adopt regulations necessary to address any such invalidity and to promote its purposes, including to provide additional exemptions, which are exempt from the APA. Any regulations must seek to ensure minimal disruption to funding and operations of programs and initiatives funded by the bill.

This bill directs the Director of Finance to make a loan of \$2.4 million to CDTFA to fund initial implementation costs, which must be repaid from tax revenues.

This bill includes a severability clause.

COMMENTS

1. Need for This Bill

According to the Author:

Californians are counting on us to do everything possible to keep them safe from mass shootings and gun violence. AB 28 is a common-sense measure that will fund school safety measures and gun violence prevention programs that have proven to be some of the most effective ways of stopping gun violence. A modest tax will provide us with a permanent, sustainable funding source for these essential programs and help protect communities across our state.

2. Gun Violence in California

Although the scourge of gun violence appears omnipresent, California has one of the lowest gun death rates in the country at 8.5 deaths per 100,000 people – about 39% lower than the national average. Gun homicides in California occur at a rate of 4.1 per 100,000 people, which puts California at the 31st highest rate of gun homicides in the U.S. For reference, Texas has 5.5 gun homicides per 100,000 (24th highest), Florida has 5.8 (21st highest), and Washington D.C. has

18.8, the highest in the country.¹ When accounting for both shooting deaths and non-fatal shootings, California has the 37th-highest rate of gun violence in the country.²

Nevertheless, despite the encouraging picture these numbers may paint in absolute terms, gun violence in California is trending upward, with communities across the state seeing gun deaths reach levels not seen in more than a decade. Oakland, for example, saw more gun violence in 2021 than in any year since 2006, and Los Angeles saw more gun violence in 2021 than in any year since 2007.³ Moreover, a spate of recent mass shootings across California – namely, in Monterey Park, Half Moon Bay and Beverly Crest – has drawn greater attention to the utter devastation that gun violence inflicts on families and communities.⁴

Moreover, in addition to its human cost, gun violence has a considerable financial cost. Everytown estimates that gun violence in the United States costs \$557 billion annually, comparable to 2.6% of the nation’s GDP, and roughly \$12.62 billion in taxpayer money. According to a recent Everytown report:

Instead of funding education, social services, economic redevelopment grants, and so many other vital public goods from which we all benefit, we are spending precious funds on an epidemic that brings nothing of benefit and plenty of heartbreak and shattered lives. While costs of course vary depending on the circumstances of the incident, each gun death costs US taxpayers an average of \$273,904 for the initial and long-term repercussions of that incident, and each nonfatal gun injury costs \$25,150.⁵

As explained in greater detail below, this bill, titled the Gun Violence Prevention, Healing, and Recovery Act, imposes an excise tax on the gross receipts of gun dealers and manufacturers, which, according to the bill’s findings and declarations, is intended “generate sustained revenue for programs that are designed to remediate the devastating effects these products [firearms, firearm precursor parts, and ammunition] cause families and communities across this state.” Additionally, the findings state that the measure would “provide dedicated revenue to sustain and expand effective gun violence prevention, healing, and recovery programs for families and communities across California, particularly in communities most disproportionately impacted by gun violence.”

3. Existing Firearm-Related Fees in California

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

¹ “Experts explain why California is still rife with gun violence despite some of the most stringent gun laws in the country.” ABC News. 26 January 2023. [Experts explain why California is still rife with gun violence despite some of the most stringent gun laws in the country - ABC News \(go.com\)](#) ; [EveryStat - EveryStat.org](#)

² “Gun Violence in California” Everytown. Jan. 2021. <https://maps.everytownresearch.org/wp-content/uploads/2021/02/Gun-Violence-in-California-2.9.2021.pdf>

³ “Gun Deaths Drive California’s Largest-Ever Rise in Homicides.” PPIC. July 12, 2021 <https://www.ppic.org/blog/gun-deaths-drive-californias-largest-ever-rise-in-homicides/> ; “2021 is Oakland’s deadliest year since 2006”, The Oaklandside. Dec. 23, 2021. <https://oaklandside.org/2021/12/23/2021-oakland-deadliest-year-since-2006-homicides-shootings-gun-violence/>; “Gun Violence hits 15-year high in L.A., taking lives and erasing hard-fought gains.” L.A. Times. Dec. 31, 2021. <https://www.latimes.com/california/story/2021-12-31/gun-violence-los-angles-15-year-high>

⁴ [California mass killings. 44 hours. 19 dead. | CNN](#)

⁵ [The Economic Cost of Gun Violence | Everytown Research & Policy](#)

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.⁶

This bill imposes an 11% tax on the gross receipts of the sale of firearms, firearm precursor parts and ammunition in the state of California., Gross receipts taxes differ from sales taxes in that they are technically levied on the seller of a good rather than at the point of sale. In practice, however, gross receipts taxes often get passed to the consumer via a higher retail price for the good in question. This measure specifies that the tax is imposed upon licensed firearms dealers, firearms manufacturers and ammunition vendors, but nothing in the bill precludes dealers and manufacturers from raising their prices to offset the tax and functionally passing the tax on to the consumers.

4. California Violence Intervention and Prevention Grant Program (CalVIP)

The CalVIP grant program was established in 2017 and replaced the California Gang Reduction Intervention and Prevention grant program. According to the BSCC website:

In October 2019 Governor Newsom signed the Break the Cycle of Violence Act (AB 1603). AB 1603 codified the establishment of CalVIP and defined its purpose: to improve public health and safety by supporting effective violence reduction initiatives in communities that are disproportionately impacted by violence, particularly group-member involved homicides, shootings, and aggravated assaults. The Break the Cycle of Violence act specifies that CalVIP grants shall be used to support, expand and replicate evidence-based violence reduction initiatives, including but not limited to (1) hospital-based violence intervention programs, (2) evidence-based street outreach programs, and (3), focused deterrence strategies.

These initiatives should seek to interrupt cycles of violence and retaliation in order to reduce the incidence of homicides, shootings, and aggravated assaults and shall be primarily focused on providing violence intervention services to the small segment of the population that is identified as having the highest risk of perpetrating or being victimized by violence in the near future.

AB 28 allocates funds received via the gross receipts tax to several gun violence programs in a specific waterfall structure, where the Legislature appropriates funds to each priority until it reaches the specified level, with any excess flowing to the next level until the Legislature appropriates the total annual revenue amount. The first and largest allocation under the bill, which is also the only allocation that is continuously appropriated, is an annual appropriation of \$75 million to Cal VIP. The other allocations (listed on p.5 of this analysis) are only actually appropriated upon action by the Legislature.

⁶ <https://oag.ca.gov/firearms/pubfaqs>

5. Excise Taxes 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. As alluded to in Comment 3 above with regard to gross receipts taxes, 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 an 11% gross receipts tax upon state-licensed firearms dealers, firearms manufacturers and ammunition vendors. 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 to discourage the sale and purchase of firearms, ammunition and precursor parts:

The tax specified in this act is a modest and reasonable tax on a profitable industry whose lawful and legitimate business activity imposes substantial harmful externalities on California’s families, communities, and taxpayers. The modest tax proposed in this measure mirrors the Pittman-Robertson federal excise tax on firearm and ammunition industry participants, is similarly dedicated to funding programs to remediate the harmful externalities of firearm industry commerce, and is similarly unlikely to discourage lawful sales and commerce in firearms or ammunition.

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.⁷

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 1937⁸ (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, however, 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 specified gun violence prevention, education and research programs in the waterfall structure discussed above.

⁷ <https://www.rand.org/research/gun-policy/analysis/essays/firearm-and-ammunition-taxes.html>

⁸ 26 U.S.C. 4181

6. Second Amendment Considerations

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.” Recently, the United States Supreme Court issued an opinion striking down New York’s proper cause requirements for applicants wishing to obtain a CCW license, and establishing a new test for determining whether a law comports with the Second Amendment’s right to bear arms.⁹ Under that test, when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation, not just that the regulation promotes an important governmental interest, as was the case previously. Under the *Bruen* decision, “how and why the regulations burden a law-abiding citizen’s right to armed self-defense” matters. The Court said, “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry.”¹⁰

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.”¹¹ In the context of firearms, the Pittman-Robertson Act has evaded or withstood legal challenge for over 100 years, which, prior to the *Bruen* decision, would have strongly suggested that firearm taxes generally do not run afoul the Second Amendment, provided they do not make firearm ownership so infeasible as to burden the rights that the amendment protects. However, whether excise taxes on firearms will survive in a post-*Bruen* legal landscape is an open question.

7. Multiple Attempts

This bill is substantially similar to three previous bills attempting to impose an excise tax on firearms and ammunition. AB 1227 (Levine), of the 2021-2022 Legislative Session, as amended on May 5, 2022, included provisions related to an excise tax on firearms. The author introduced substantially similar measures in 2021 (AB 1223) and in 2019 (AB 18). AB 18 was held on suspense in the Assembly Appropriations Committee. AB 1223 made it to the Assembly floor and AB 1227 made it to the Senate floor. However, both contained urgency clauses, requiring a two-thirds vote to pass. Despite receiving majority support, the bills failed to receive the required two-thirds vote.

This bill is distinguishable from AB 1227 in several notable ways:

- Whereas AB 28 allocates funds to several specific gun violence prevention programs in a specific waterfall structure, AB 1227 directed the Legislature to appropriate one half of the tax revenue for gun violence prevention programs, education, and research, and

⁹ *New York State Rifle and Pistol Association v. Bruen* (2022), 142 S.Ct. 2111 - this decision also implicates California’s CCW law, which, as the Court noted, is substantially similar to New York’s, at least with regard to the “good cause” requirement. For more information, see this committee’s analysis of Senate Bill 2 (Portantino).

¹⁰ *Id.* at p. 2132-2133.

¹¹ *Nat’l Fed’n of Indep. Bus. v. Sebelius* (2012)567 U.S. 519, 573; *Bailey v. Drexel Furniture Co.* (1922) 259 U.S. 20, 38.)

allocated the other half to the Board of State and Community Corrections for the California Violence Intervention and Prevention (CalVIP) Grant Program, for the sole purpose of funding CalVIP grants.

- AB 28 is an 11% gross receipts tax imposed on dealers and manufacturers, whereas AB 1227 imposed a per gun excise tax of 10% for handguns and 11% for long guns, rifles, firearm precursor parts and ammunition, and imposed the tax only on dealers.
- AB 28 does not contain an exemption that AB 1227 included for long guns with a barrel length longer than 16 inches, as well as any ammo used in those kinds of long guns, upon presentation of a valid hunting license.
- AB 28 does contain exemptions that were not included in AB 1227. Specifically AB 28 exempts any sales to either an active or retired peace officer, whereas AB 1227 only exempted sales to a peace officer for use in the regular course of employment. Additionally, AB 28 exempts sales made by firearms dealers or manufacturers with gross receipts of less than \$5,000 in any quarterly period, whereas AB 1227 did not.
- AB 28 does not include an urgency clause, though still requires a 2/3 vote in each house as a measure that would result in any taxpayer paying a higher tax.¹²

8. Amendments

The Author is taking amendments in committee to address an issue raised by the California Department of Tax and Fee Administration. Specifically, the amendment provides that a dealer who has their permit revoked may not operate as a firearm dealer until the permit has been reinstated or a new permit has been issued.

9. Argument in Support

According to Smart Justice California:

[AB 28] would secure dedicated and sustained funding for lifesaving violence intervention initiatives and related gun violence prevention, education, and research purposes through a modest surtax on firearm industry profits. [...]

Since 1919, federal law has placed a 10 to 11% excise tax on the sale of guns, ammunition, and related products by licensed manufacturers, producers, and importers. Revenues from this excise tax have been used to fund wildlife conservation efforts that remediate the effects that guns and ammunition have on wildlife populations through hunting, particularly through grants to state wildlife agencies and for conservation-related research. The NRA has referred to this federal Firearms and Ammunition Excise tax as a “legislative model” and “friend of the hunter.”

Just as the federal tax on firearm industry manufacturers reasonably generates revenue to remediate the harmful effects that firearm industry commerce can have on wildlife, AB 28 would place an identical tax on retail sellers profiting from the sale of

¹² Cal. Const, Section 3, Article XIII A

the same products in order to fund programs that effectively remediate the devastating human toll these products take on families and communities across the state. This tax is a modest and reasonable excise tax on sellers whose lawful and legitimate commercial activity still imposes enormous harmful impacts on California.

This bill is not intended to penalize firearm sellers or otherwise discourage lawful firearm sales but would reasonably generate revenue to sustain programs that are targeted and effective at mitigating the harms that firearms and related products too often cause.

10. Argument in Opposition

According to a coalition of 21 firearms advocacy, sporting and wildlife conservation groups:

All of California's citizens support and benefit from efforts intended to address the negative impact the criminal use of firearms has upon our law-abiding public. Because those who perform these illegal acts do not buy their firearms or munitions from licensed dealers, they would not pay a single cent towards the programs this bill would fund. Rather, AB 28 would wrongly place the entire burden of funding these initiatives on a small, innocent segment of California's law-abiding public.

Additionally, by substantially raising the cost of purchasing a firearm and ammunition in California, AB 28 would disproportionately impact the ability of economically disadvantaged communities and individuals to legally purchase a firearm and ammunition to protect themselves and their loved ones. Further, AB 28 would impede their equitable access to hunting and shooting sports – at a time when the Administration and the Legislature are seeking to increase participation in outdoor recreation and access for all Californians.

Firearms and ammunition are already taxed at the federal level pursuant to the federal Pittman-Robertson Act (PR). But those dollars are allocated back to states to fund beneficial programs – including wildlife habitat projects that benefit game and non-game species. This year alone, the California Department of Fish and Wildlife will be allocated well over \$30 million in federal PR dollars – monies which will fund a substantial portion of our state's wildlife management, conservation, and research efforts. By doubling the excise tax law-abiding hunters and shooters already pay on all firearms and ammunition, AB 28 would effectively raise the total tax rate on these items to nearly 30% – markedly reducing their sales and, in turn, the associated federal PR funding allocated back to California for critical wildlife conservation and management efforts.

AB 28 would do nothing to reduce criminal use of firearms. What AB 28 would do is inequitably impact the ability of disadvantaged communities and economically challenged individuals to protect themselves and their families, unjustly place the entire burden of funding these initiatives on California's innocent and law-abiding hunters and shooters, and negatively impact our wildlife and their habitats.