
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

Bill No: AB 1227
Author: Levine
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Consultant: Grinnell

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Tax Levy: No
Fiscal: Yes

FIREARMS AND AMMUNITION: EXCISE TAX

Imposes an excise tax on firearms and ammunition sold in the state on firearms dealers and ammunition vendors.

Background

United States Constitution. The Second Amendment to the United States Constitution reads: "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 *Heller v. District of Columbia*, 554 U.S. 570, 599 (2008), the United States Supreme Court held that the Second Amendment grants citizens the right to own guns in the home for self-defense. In *McDonald v. Chicago*, 561 U.S. 742, 880 (2010), the Court held that the Second Amendment right is fully applicable to the States. Last November, the Court heard oral arguments in *New York State Rifle and Pistol Association v. Bruen*, which challenges a New York statute that requires an applicant for a license to carry a concealed handgun outside of the home to show "proper cause" for the license; legal experts state that the Court's decision may significantly impact state and local firearms laws.

Federal taxation on firearms and ammunition. Congress enacted the Revenue Act of 1918 during World War I to help fund wartime spending, which included the first excise tax on firearms, shells, and cartridges. Congress then enacted the Federal Aid in Wildlife Restoration Act in 1937, which reallocated previously enacted taxes on firearms and ammunition, and extended them to archery equipment. Commonly known as Pittman-Robertson, the U.S. Fish and Wildlife Service (FWS), within the Department of the Interior, distributes tax proceeds from these taxes to fund efforts in states and territories for wildlife restoration, conservation, and hunter education and safety programs. The Act imposes taxes on the manufacturer, distributor, or importer of the good subject to the tax at the following rates:

- 10 percent for pistols and revolvers;
- 11 percent for other firearms and ammunition; and
- 11 percent for bows and archery equipment.

Between 1939 and 2019, FWS disbursed \$18.8 billion for wildlife restoration and hunter education and safety activities for Pittman-Robertson programs.

State excise taxes. State law imposes several excise taxes, including on cigarettes and tobacco products, alcoholic beverages, motor vehicle and diesel fuel, and cannabis, among others. Last year, the Legislature enacted SB 395 (Caballero), which imposed a tax on consumers of electronic cigarettes collected by retailers to fund various health care purposes, which takes effect on July 1, 2023. Excise taxes generally have a dual benefit when applied to vices or other social harms: first, they deter behavior with negative or damaging health or societal effects, such as consuming tobacco or cannabis, by increasing its cost, and second, they generate revenue for public services

Most of the state's excise taxes contain their own provisions guiding administration, such as requirements to register with the California Department of Tax and Fee Administration (CDTFA), enforcement, collections, and appeals, among others. Others enact more basic provisions and instead link to the Fee Collections Procedures Law, the state's general statute CDTFA uses to administer its special taxes and fees.

While California does not impose an excise tax on firearms and ammunition, California imposes several fees upon the purchase of a new firearm in the state, which is currently \$37.19 per firearm: the Dealer Record of Sale fee (DROS) is \$31.19, and covers the costs of the required background check prior to purchase and the transfer registry. There is also a \$1.00 Firearms Safety Act Fee, and a \$5.00 Safety and Enforcement Fee. In the event of a private party transfer, a firearms dealer may charge an additional fee of up to \$10.00 per firearm.

Firearm violence. According to the Gun Violence Archive, there were 19,411 firearms deaths in the United States in 2020. The Federal Bureau of Investigation (FBI) identified 61 "active shooter" attacks in 2021 that killed 103 people and injured 130 others. The deadliest mass shooting last year occurred at a grocery store in Boulder, Colo., where 10 people were killed, according to the FBI. Recent shootings at Robb Elementary School in Uvalde, Texas, killed 21, and ten more in a supermarket in Buffalo, NY, last month. From 1966 to 2019, 77 percent of mass shooters obtained the weapons they used in their crimes through legal purchases, according to the National Institute of Justice, the research wing of the United States Department of Justice.

Seeking to raise revenue for violence prevention, gun violence prevention education, and gun violence prevention research programs, the author wants to impose an excise tax on firearms on firearms and ammunition dealers and vendors.

Proposed Law

Effective July 1, 2023, Assembly Bill 1227 imposes upon licensed firearms dealers, ammunition vendors, and firearm precursor part vendors, an excise tax 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.

The measure exempts from the tax the sale of any firearm, ammunition, or firearm precursor part to a peace officer or any law enforcement agency employing that peace officer for use in the

normal course of employment. AB 1227 states that its enactment is contingent upon an appropriation of funds by the Legislature to CDTFA to implement it.

The bill sets return and tax payment due dates as the last day of the month following the close of the calendar quarter, but otherwise directs CDTFA to collect the tax pursuant to the Fee Collections Procedures Law.

The bill creates the Gun Violence Prevention, Healing, and Recovery Fund in the state treasury, and deposits all proceeds from the tax into the Fund, less CDTFA's administrative costs. The bill then directs the Legislature to appropriate those funds for gun violence prevention programs, education, and research.

The measure states 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.

The bill defines several terms, includes a severability clause, and contains several legislative findings and declarations supporting its purposes.

State Revenue Impact

Pending.

Comments

1. Purpose of the 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. Best way? Gun violence kills and injures thousands of Americans per year. Policymakers at all level of government are considering several different measures in the hopes of reducing firearm violence and the collective societal terror it imposes. AB 1227 imposes a firearms excise tax in California to raise funds for programs intended to reduce gun violence, to be determined in

the future by the Legislature according to general definitions set forth in the bill. However, the tax is imposed on firearm and ammunition dealers and vendors, similar to federal law, and not on purchasers. As a result, those seeking to purchase firearms and ammunition could travel to other states or order products from out of state sellers to purchase from sellers who are not subject to the tax. As such, the measure's tax is not intended to reduce gun violence by increasing the cost of firearms; AB 1227's findings and declarations refer to a 2018 study by the Rand Corporation, updated in 2021, that states:

“Little empirical evidence indicating how taxation would influence firearm-related outcomes, such as violent crime or suicides, or establishing how taxing firearms or ammunition would affect firearm prices, the supply of firearms, or defensive gun use. Marginal increases in price associated with hunting licenses offer little evidence to suggest how taxes would influence recreational gun use.”

Instead, AB 1227 intends for the violence reduction programs it funds to achieve its gun violence reduction goals. The Committee may wish to consider whether AB 1227's tax is necessary, or whether the programs it supports can be funded through other means.

3. Litigation. Some jurisdictions have imposed gun violence prevention taxes imposed on consumers, including Cook County in Illinois, and Tacoma, Washington, among others. However, recent United States Supreme Court jurisprudence limited the ability of states and local agencies to restrict the ability of citizens to purchase firearms for self-defense purposes. A state court upheld Cook County's tax in *Guns Save Life, Inc. v Ali*, 2020 IL App (1st) 181846, but a Federal Court struck down a \$1,000 tax on imported guns imposed by the Commonwealth of the Northern Mariana Islands in *Murphy v. Guerrero*, Case 1:14-CV-00026, (D.N. Mar. I. Sep. 28, 2016). The Court found that that the high tax rate imposed “a tremendous burden on the rights of responsible law-abiding citizens in the Commonwealth to obtain handguns.” AB 1227's tax is modelled on long-standing federal law, and operates very differently that the tax at issue in *Murphy* because it is imposed at a much a lower rate, and paid by firearms dealers, not purchasers. However, should AB 1227 be enacted, potential litigants may argue that any tax imposed on firearms burdens constitutional rights.

4. Carts and horses. AB 1227 states that its enactment is contingent upon an appropriation of funds by the Legislature to CDTFA to implement it. However, tax programs require time and money to implement: CDTFA must design forms, inform sellers, hire necessary staff, and program its information technology systems. Instead of making its enactment contingent on a future appropriation, which would make July 1, 2023 enactment not feasible unless the appropriation is included in the 2022-23 Budget Act, the Committee may wish to consider amending AB 1227 to delete the appropriation contingency and instead allow the Director of Finance to make a loan from the General Fund to CDTFA for costs necessary to implement the bill.

5. Gut and amend. As approved by the Assembly, AB 1227 required the California Energy Commission to consider specified amendments to the roof replacement building standards. On May 5th, 2022, the author removed those provisions and inserted the current ones that impose a firearms excise tax. As amended, AB 1227 is substantively identical to AB 1222 (Levine), which was approved by the Assembly Revenue and Taxation and Appropriations Committees, but did not receive the required 2/3 votes on the Assembly Floor.

6. 2/3. As an urgency statute, AB 1227 must be approved by 2/3 vote of each house of the Legislature. Regular legislation takes effect on the January 1 following its passage, but urgency bills take effect as soon as they are passed, signed, and chaptered. Additionally, AB 1227 constitutes a change in state statute that would result in any taxpayer paying a higher tax, which requires a 2/3 vote by each house of the Legislature to be enacted under Section 3 of Article XIII A of the California Constitution.

7. Coming and going. The Senate Rules Committee ordered a double referral for AB 1227: first, to the Committee on Governance and Finance to consider its tax implications, then to the Committee on Public Safety.

Assembly Actions

Not relevant to this version of the bill.

Support and Opposition (6/13/22)

Support: None submitted

Opposition:

California Rifle & Pistol Association, Inc

National Rifle Association - Institute for Legislative Action

Peace Officers Research Association of California (PORAC)

Safari Club International - California Chapters

1 Individual

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