AMENDED IN ASSEMBLY MAY 28, 2021

AMENDED IN ASSEMBLY MAY 24, 2021

AMENDED IN ASSEMBLY APRIL 29, 2021

AMENDED IN ASSEMBLY APRIL 19, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL No. 1223

Introduced by Assembly Member Levine
(Coauthors: Assembly Members Berman, McCarty, Nazarian, and Wicks)

February 19, 2021

An act to add Part 16 (commencing with Section 36001) to Division 2 of the Revenue and Taxation Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1223, as amended, Levine. Firearms and ammunition: excise tax.

Existing law establishes the California Violence Intervention and Prevention (CalVIP) Grant Program, administered by the Board of State and Community Corrections, to award competitive grants for the purpose of violence intervention and prevention.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill, the Gun Violence Prevention, Healing, and Recovery Act, would, commencing July 1, 2022, 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, rifle, firearm precursor part, and ammunition, as specified.

The tax would be collected by the state pursuant to the Fee Collection Procedures Law. The bill would require that the revenues collected be deposited in the ~~General Fund.~~ *Gun Violence Prevention, Healing, and Recovery Fund, which the bill would establish in the State Treasury.*

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of ⅔ of the membership of each house of the Legislature.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Gun Violence Prevention, Healing, and Recovery Act.

SEC. 2. The Legislature hereby finds and declares all of the following:

(a) Gun violence is a public health and safety crisis. While California's gun homicide and gun death rates are lower than the national average, firearm violence remains a leading cause of death, injury, and trauma for young people and especially young people of color in this state.

(b) Preventing gun violence and delivering community peace and safety to all Californians is a matter of racial justice. From 2016 to 2018, homicide was responsible for 46 percent of all deaths among Black teenage males in California, according to data from the Centers for Disease Control and Prevention (CDC). Over 96 percent of these young homicide victims were killed with firearms. The parents of a Black son in this age group were as likely to lose their child to gun violence in California as nearly every other cause of death combined.

(c) Gun violence imposes enormous harms on those who are not direct victims as well. The Director of the CDC's Division of Violence Prevention presented research to Congress demonstrating that "youth living in inner cities show a higher prevalence of post-traumatic stress disorder than soldiers" in the nation's wartime military.

(d) People who have been victims of violence are also at substantially higher risk of being violently reattacked or killed. Relatedly, exposure to violence and associated traumas can encourage some people to seek safety from armed groups or to become involved themselves in cycles of retaliatory community violence.

(e) 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. A report from the National Institute for Criminal Justice Reform in 2020 determined that each firearm homicide in Stockton, California cost tax payers at least $2,500,000 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 cost taxpayers nearly $1,000,000 on average. A 2021 report by Everytown for Gun Safety found that gun death and injury costs California $22.6 billion annually, of which $1.2 billion is paid 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."

(f) The year 2020 saw an unprecedented surge in firearm and ammunition sales across the nation, and this trend has continued into 2021. The Washington Post reported that January 2021 had the third highest monthly firearm sales total on record, with an 80-percent year-over-year increase compared to January 2020. A spokesman for the National Shooting Sports Foundation (NSSF), the chief national trade association for the firearm and ammunition industry, told the Financial Times in August 2020 that "There has never been a sustained surge in firearm sales quite like what we are in the midst of." In addition, a 2020 NSSF report noted that

"the economic growth America's firearm and ammunition industry has experienced in recent years has been nothing short of remarkable."

(g) This surge in firearm and ammunition sales and profits has occurred alongside an unprecedented nationwide spike in shootings and gun homicides. The Washington Post reported in late December 2020 that "The United States has experienced the largest single one-year increase in homicides since the country started keeping such records," and that this unprecedented spike in murders was "due largely to gun violence."

(h) As the firearm industry has gained record profits, state and local taxpayers have faced increased costs and economic harms as a consequence, while more families and communities have suffered the brutal loss or victimization of a loved one.

(i) 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. Gun dealers, for example, are the leading source of firearms trafficked to illegal markets, often through straw purchases, as well as negligent losses. Data from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) indicates that from 2016 to 2019 alone, licensed dealers in California reported losing track of nearly 1,300 firearms from their inventories, not including firearms reported as stolen. The true number of these misplaced firearms, including unreported losses, is likely substantially higher.

(j) For these reasons, record gun and ammunition sales in 2020 and 2021 can be expected to contribute to increases in trafficked and stolen firearms fueling additional gun violence. This was confirmed by a cross-sectional time series study conducted by researchers from the University of California Firearm Violence Research Center finding "a significant increase in firearm violence in the United States associated with the coronavirus pandemic-related surge in firearm purchasing." This result is consistent with other studies showing that previous spikes in gun sales were associated with increased fatal and nonfatal firearm injury in California.

(k) 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. Revenues from this excise tax have been used, since passage of the Pittman-Robertson Federal Aid in Wildlife Restoration Act in 1937, to fund wildlife conservation efforts that remediate the effects firearms and ammunition have on wildlife populations through game hunting, particularly through grants to state wildlife agencies, and for conservation-related research, technical assistance, hunter safety, and "hunter development."

(*l*) This act will similarly place a reasonable tax on sellers profiting from the sale of firearms, ammunition, and firearm precursor parts in order to generate sustained revenue for programs that are specifically focused at remediating the devastating effects these products cause families and communities across our state.

(m) The National Rifle Association has referred to the Pittman-Robertson federal Firearms and Ammunition Excise tax as a "legislative model" and "friend of the hunter," and the NSSF has repeatedly emphasized the importance of this federal excise tax as well. A 2019 statement by an NSSF director published on NSSF's web page emphasized that "an often overlooked, and certainly under-communicated benefit, is the impact that excise taxes on firearms and ammunition have on conservation and wildlife populations," and a similar 2018 statement from NSSF praised Key Pittman and Willis Robertson, the legislators who sponsored the Pittman-Robertson excise tax, as "heroes of the most successful conservation model in the world."

(n) 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 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. A gun policy research review by the Rand Corporation in 2018 noted that the available "research suggests that moderate tax increases on guns or ammunition would do little to disrupt hunting or recreational gun use."

SEC. 3. Part 16 (commencing with Section 36001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 16. FIREARM, AMMUNITION, AND FIREARM PRECURSOR PART EXCISE TAX

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

36001. For purposes of this part:

(a) The following terms shall have the same meaning provided in Division 2 (commencing with Section 16100) of Title 1 of Part 6 of the Penal Code: "ammunition," "ammunition vendor," "firearm," "firearm precursor part," "firearm precursor part vendor."

(b) "Licensed firearms dealer" shall have the same meaning provided in Section 26700 of the Penal Code.

(c) "Department" means the California Department of Tax and Fee Administration.

(d) "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.

(e) "Peace officer" means any person described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 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.

36005. (a) There is hereby established in the State Treasury the Gun Violence Prevention, Healing, and Recovery Fund to receive moneys pursuant to Section 36041.

(b) All moneys in the Gun Violence Prevention, Healing, and Recovery Fund, including interest or dividends earned by the fund, shall be used to fund gun violence prevention programs, gun violence prevention education, and gun violence prevention research, upon appropriation by the Legislature.

Chapter 2. Imposition and Rate of Tax

36011. Commencing July 1, 2022, an excise tax is hereby imposed 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 to mirror the Pittman-Robertson Act federal excise tax rate.

Chapter 3. Exemptions

36021. There are exempted from the tax imposed by this part, 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.

Chapter 4. Collection and Administration

36031. (a) The department shall administer and collect the taxes imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the taxes imposed by this part, and references to "feepayer" shall mean any person liable for the payment of the taxes imposed under this part and collected pursuant to that law.

(b) The department may prescribe, adopt, and enforce rules and regulations, including emergency regulations as necessary, relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

36032. The taxes imposed by this part 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.

36033. 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.

CHAPTER 5. DISPOSITION OF PROCEEDS

36041. All amounts required to be paid pursuant to Section 36011 shall be paid to the department in the form of remittances payable to the department, and those revenues, net of refunds, and costs of administration, shall be deposited in the ~~General Fund.~~ *Gun Violence Prevention, Healing, and Recovery Fund, established pursuant to Section 36005.*

CHAPTER 6. NONPREEMPTION

36042. This part 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.

SEC. 4. If any section, subsection, sentence, or clause of this act is for any reason declared unconstitutional, invalid, or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity, or enforceability of the remaining portions of this act or any part thereof. The Legislature hereby declares that it would have adopted this act notwithstanding the unconstitutionality, invalidity, or unenforceability of any one or more of its sections, subsections, sentences, or clauses.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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