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AB-1594 Firearms: civil suits. (2021-2022)

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Assembly Bill No. 1594

CHAPTER 98

An act to add Title 20 (commencing with Section 3273.50) to Part 4 of Division 3 of the Civil Code, relating to firearms.

[Approved by Governor July 12, 2022. Filed with Secretary of State July 12, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1594, Ting. Firearms: civil suits.

Existing law generally regulates the transfer and possession of firearms. Existing law also provides for various private rights of action. Existing law also provides that specified unfair methods of competition and unfair or deceptive acts or practices are unlawful. Existing law also makes false advertising unlawful.

This bill, beginning on July 1, 2023, would establish a firearm industry standard of conduct, which would require a firearm industry member, as defined, to establish, implement, and enforce reasonable controls, as defined, take reasonable precautions to ensure that the member does not sell, distribute, or provide a firearm-related product, as defined, to a downstream distributor or retailer of firearm-related products who fails to establish, implement, and enforce reasonable controls, and adhere to specified laws pertaining to unfair methods of competition, unfair or deceptive acts or practices, and false advertising. The bill would also prohibit a firearm industry member from manufacturing, marketing, importing, offering for wholesale sale, or offering for retail sale a firearm-related product that is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety in California, as specified.

This bill would also authorize a person who has suffered harm in California, the Attorney General, or city or county attorneys to bring a civil action against a firearm industry member for an act or omission in violation of the firearm industry standard of conduct, as specified. The bill would authorize a court that determines that a firearm industry member has engaged in the prohibited conduct to award various relief, including injunctive relief, damages, and attorney's fees and costs.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Firearm Industry Responsibility Act.

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

(a) The Legislature's intent and purpose in enacting the Firearm Industry Responsibility Act is to protect public health and safety in California by promoting safe and responsible firearm industry member practices and ensuring that firearm industry members may be held justly accountable for wrongful conduct that endangers and harms the public in California.

(b) Firearm industry members' business conduct has enormous direct and secondary impacts on individuals, families, and communities across California. Firearm industry members profit from the sale, manufacture, distribution, importing, or marketing of lethal products, and products designed to be used with and for lethal products, that are frequently used to threaten, injure, and kill human beings in California, and which frequently cause enormous harms to individuals' and communities' health, safety, and well-being, as well as economic opportunity and vitality.

(c) The firearm industry has long been made aware of these harms, and has been called on to adopt reasonably feasible and effective reforms to their business practices to prevent or minimize those harms, but many firearm industry members have failed to do so.

(d) California has adopted critical laws regulating aspects of the firearm industry. However, some members of the firearm industry have continued to develop dangerous business practices and to manufacture, sell, distribute, and market increasingly dangerous new products designed to circumvent and undermine these laws. That purpose has often been explicit in advertisements for products ranging from unserialized ghost gun build kits to bump stocks to bullet button assault weapons, and many more.

(e) Accordingly, the Legislature finds that it is necessary to proactively establish an affirmative obligation that firearm industry members meet a reasonable standard of conduct, and face civil liability for harms caused by knowing violations of that standard, including when those violations do not constitute criminal conduct.

(f) Many other industries are required to adopt reasonable controls that are reasonably feasible and effective at preventing foreseeable and substantial risks to the public, including the illicit use of their products. The Firearm Industry Responsibility Act is intended to bring regulation of firearm industry members who conduct business in California, who sell their products to California consumers, and who have reason to believe that their products will be sold or possessed in California, closer in line with these widely accepted public health and safety standards.

(g) Firearm industry members' failures to adopt reasonable controls to protect public health and safety have led to foreseeable and grave public harms that could have been reasonably prevented with minimal cost or effort.

(h) Such failures also provide an unfair business advantage to irresponsible firearm industry members over more responsible competitors who take reasonable precautions to protect human life and well-being.

(i) The Legislature intends to ensure a level playing field for responsible firearm industry members, incentivize firearm industry members to take reasonable steps to protect public health and safety, and ensure that members of the California public who are harmed by a firearm industry member's violation of law, and public officials acting on behalf of the people of California, may bring legal action to seek appropriate justice and fair remedies for those harms in court.

SEC. 3. Title 20 (commencing with Section 3273.50) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 20. Firearm Industry Responsibility Act

3273.50. As used in this title, the following definitions apply:

(a) "Ammunition" has the same meaning as provided in subdivision (b) of Section 16150 of the Penal Code.

(b) "Firearm" has the same meaning as provided in subdivisions (a) and (b) of Section 16520 of the Penal Code.

(c) "Firearm accessory" means an attachment or device designed or adapted to be inserted into, affixed onto, or used in conjunction with a firearm that is designed, intended, or functions to alter or enhance the firing capabilities of a firearm, the lethality of the firearm, or a shooter's ability to hold and use a firearm.

(d) "Firearm-related product" means a firearm, ammunition, a firearm precursor part, a firearm component, and a firearm accessory that meets any of the following conditions:

(1) The item is sold, made, or distributed in California.

(2) The item is intended to be sold or distributed in California.

(3) The item is or was possessed in California and it was reasonably foreseeable that the item would be possessed in California.

(e) "Firearm precursor part" has the same meaning as provided in Section 16531 of the Penal Code.

(f) "Firearm industry member" shall mean a person, firm, corporation, company, partnership, society, joint stock company, or any other entity or association engaged in the manufacture, distribution, importation, marketing, wholesale, or retail sale of firearm-related products.

(g) "Reasonable controls" means reasonable procedures, acts, or practices that are designed, implemented, and enforced to do the following:

- (1) Prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under state or federal law, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or another or of possessing or using a firearm-related product unlawfully.
- (2) Prevent the loss or theft of a firearm-related product from the firearm industry member.
- (3) Ensure that the firearm industry member complies with all provisions of California and federal law and does not otherwise promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product.

3273.51. (a) A firearm industry member shall comply with the firearm industry standard of conduct. It shall be a violation of the firearm industry standard of conduct for a firearm industry member to fail to comply with any requirement of this section.

(b) A firearm industry member shall do both of the following:

- (1) Establish, implement, and enforce reasonable controls.
- (2) Take reasonable precautions to ensure that the firearm industry member does not sell, distribute, or provide a firearm-related product to a downstream distributor or retailer of firearm-related products who fails to establish, implement, and enforce reasonable controls.

(c) A firearm industry member shall not manufacture, market, import, offer for wholesale sale, or offer for retail sale a firearm-related product that is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety in California. For the purposes of this subdivision, the following shall apply:

- (1) A firearm-related product shall not be considered abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety based on a firearm's inherent capacity to cause injury or lethal harm.
- (2) There shall be a presumption that a firearm-related product is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety if any of the following is true:
 - (A) The firearm-related product's features render the product most suitable for assaultive purposes instead of lawful self-defense, hunting, or other legitimate sport and recreational activities.
 - (B) The firearm-related product is designed, sold, or marketed in a manner that foreseeably promotes conversion of legal firearm-related products into illegal firearm-related products.
 - (C) The firearm-related product is designed, sold, or marketed in a manner that is targeted at minors or other individuals who are legally prohibited from accessing firearms.

(d) A firearm industry member shall not engage in any conduct related to the sale or marketing of firearm-related products that is in violation of the following sections:

- (1) Paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (9) of subdivision (a) of Section 1770.
- (2) Section 17200 of the Business and Professions Code.
- (3) Section 17500 of the Business and Professions Code.
- (4) Section 17508 of the Business and Professions Code.

3273.52. (a) An act or omission by a firearm industry member in violation of the firearm industry standard of conduct set forth in Section 3273.51 shall be actionable under this section.

(b) A person who has suffered harm in California because of a firearm industry member's conduct described by subdivision (a) may bring an action in a court of competent jurisdiction.

(c) (1) The Attorney General may bring a civil action in a court of competent jurisdiction in the name of the people of the State of California to enforce this title and remedy harm caused by a violation of this title.

- (2) A city attorney may bring a civil action in a court of competent jurisdiction in the name of the people of that city to enforce this title and remedy harm caused by a violation of this title.

(3) A county counsel may bring a civil action in a court of competent jurisdiction in the name of the people of that county to enforce this title and remedy harm caused by a violation of this title.

(d) If a court determines that a firearm industry member engaged in conduct described by subdivision (a), the court may award any or all of the following:

(1) Injunctive relief sufficient to prevent the firearm industry member and any other defendant from further violating the law.

(2) Damages.

(3) Attorney's fees and costs.

(4) Any other appropriate relief necessary to enforce this title and remedy the harm caused by the conduct.

(e) (1) In an action alleging that a firearm industry member failed to establish, implement, and enforce reasonable controls in violation of paragraph (1) of subdivision (b) of Section 3273.51, there shall be a rebuttable presumption that the firearm industry member failed to implement reasonable controls if both of the following conditions are satisfied:

(A) The firearm industry member's action or failure to act created a reasonably foreseeable risk that the harm alleged by the claimant would occur.

(B) The firearm industry member could have established, implemented, and enforced reasonable controls to prevent or substantially mitigate the risk that the harm would occur.

(2) If the rebuttable presumption described by paragraph (1) is established, the firearm industry member has the burden of proving by a preponderance of the evidence that the firearm industry member established, implemented, and enforced reasonable controls.

(f) An intervening act by a third party, including, but not limited to, criminal misuse of a firearm-related product, shall not preclude a firearm industry member from liability under this section.

3273.54. (a) This title shall not be construed or implied to limit or impair in any way the right of a person or entity to pursue a legal action under any other authority.

(b) This title shall not be construed or implied to limit or impair in any way an obligation or requirement placed on a firearm industry member by any other authority.

(c) This title shall be construed and applied in a manner that is consistent with the requirements of the California and the United States Constitutions.

3273.55. This title shall become operative on July 1, 2023.

SEC. 4. If any provision of this act, or part of this act, any clause within this act, any combination of words within this act, or the application of any provision or part or clause or combination of words of this act to any person or circumstance, is for any reason held to be invalid or unconstitutional, the remaining provisions, clauses, words, or applications of provisions, clauses, or words shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.