

Date of Hearing: April 6, 2021
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1223 (Levine) – As Introduced February 19, 2021

SUMMARY: Imposes a \$25 excise tax on the sale of a new firearm and an excise tax in a percentage amount upon the sale of ammunition, the proceeds of which are to be deposited into the California Violence Intervention and Prevention Grant Program (CalVIP) Firearm and Ammunition Tax Fund, which the bill also creates. Specifically, **this bill:**

- 1) Establishes in the State Treasury the CalVIP Firearm Tax Fund to receive moneys from the \$25 firearm excise tax and percentage ammunition excise tax and continuously appropriates those moneys, without regard to fiscal years, to the Board of State and Community Corrections (BSCC) for the purpose of funding grants, as specified.
- 2) Sunsets the Tax Fund on January 1, 2028.
- 3) Extends the operative date of the CalVIP program – currently due to expire on January 1, 2025 – to January 1, 2028.
- 4) Imposes an excise tax on every retailer upon the sale of a firearm sold as new at the rate of \$25 per firearm, to be deposited into the CalVIP Firearm and Tax Fund.
- 5) Imposes an excise tax on every retailer upon the sale of ammunition sold at retail at the rate of ___ % of the gross receipts of each ammunition sale, to be deposited into the CalVIP Firearm and Tax Fund.
- 6) Exempts from these taxes the sale of any firearm or ammunition purchased by any peace officer or any law enforcement agency employing that peace officer, for use in the normal course of employment.
- 7) Requires California Department of Tax and Fee Administration (CDTFA) to administer and collect the taxes imposed by this proposal, as specified.
- 8) Makes the taxes imposed by these provisions due and payable to CDTFA quarterly on or before the last day of the month next succeeding each quarterly period of three months.
- 9) Requires 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 CDTFA.
- 10) Requires that the taxed amounts be paid to CDTFA in the form of remittances payable to the department, and those revenues, net of refunds and costs of administration, shall be deposited in the CalVIP Firearm Tax Fund.

11) Defines the following terms for purposes of the CalVIP Firearm and Ammunition Tax:

- a) "Ammunition" means a loaded cartridge consisting of a primed case, propellant, and one or more projectiles capable of being fired from a firearm. "Ammunition" includes reloaded ammunition. "Ammunition" does not include blanks;
- b) "Antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898. This includes any matchlock, flintlock, percussion cap, or similar type of ignition system, or any replica thereof, whether actually manufactured before or after the year 1898, or any firearm manufactured in or before 1898 that uses fixed ammunition no longer manufactured in the United States and not readily available in the ordinary channels of commercial trade;
- c) "Department" means the California Department of Tax and Fee Administration;
- d) "Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. "Firearm" includes only any handgun, semiautomatic shotgun, or semiautomatic rifle. "Firearm" does not include an antique firearm;
- e) "Handgun" means any pistol, revolver, or firearm capable of being concealed upon the person;
- f) "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 that 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;
- g) "Peace officer" means any person described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code that 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, that is authorized to carry a firearm while on duty;
- h) "Retailer" means any person that is engaged in the business of making retail sales of goods, including firearms and ammunition, to the general public;
- i) "Semiautomatic" refers to a firearm that uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger. "Semiautomatic" does not include a pump, bolt, or lever action shotgun or rifle; and,
- j) "Sold as new" refers to a firearm sold by a retailer that has not previously been purchased for any purpose other than for resale.

12) Makes Legislative Findings and Declarations.

EXISTING LAW:

- 1) 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.)
- 2) Establishes the CalVIP program until January 1, 2025. (Pen. Code, §§ 14130; 14132.)
- 3) Authorizes DOJ to require the dealer to charge each firearm purchaser a fee not to exceed one dollar (\$1), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. (Pen Code § 28225, subd. (a).)
- 4) States that the fee shall be no more than what is necessary to fund specified costs to the DOJ. (Pen Code § 28225, subs. (b) and (c).)
- 5) 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.)
- 6) 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.)
- 7) Authorizes DOJ to require a dealer to charge each firearm purchaser a fee in the amount of thirty-one dollars and nineteen cents (\$31.19) to be available, upon appropriation by the Legislature, for expenditure by the department to offset the reasonable costs of firearms-related regulatory and enforcement activities related to the sale, purchase, manufacturing, lawful or unlawful possession, loan, or transfer of firearms. (Pen. Code § 28233.)
- 8) 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.)
- 9) Requires various fees to be paid to the Department of Justice at the time of a firearm purchase. (Pen. Code, § 28200, et. seq.)
- 10) Imposes an eighteen cent (\$0.18) tax on each gallon of fuel sold in the state. ((Rev. and Tax. Code, § 7360.)
- 11) Imposes taxes on cigarettes. (Rev. and Tax Code §§ 30101, et. seq.)
- 12) Imposes taxes on cannabis. (Rev. and Tax. Code §§ 34010, et. seq.)

EXISTING FEDERAL LAW:

- 1) Imposes a 10% tax on the manufacturer, producer, or importer of a pistol or revolver. (26 U.S.C. § 4181).
- 2) 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.*)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** “Gun sales and incidents of gun violence have increased dramatically since the beginning of the Covid-19 pandemic. 2020 saw a 46 percent increase in gun homicides, and January 2021 was the deadliest month for gun homicides since 2007.

“In 2019, Governor Gavin Newsom signed the Break the Cycle of Violence Act which codified the California Violence Intervention and Prevention (CalVIP) Grant Program to award competitive grants to this program for the purpose of violence intervention and prevention. Since 2007, the Legislature appropriated funds annually to the California Gang Reduction, Intervention and Prevention program in the State Budget, which was renamed CalVIP in 2017.

“In 2019, these programs helped California reduce gun homicide among the high risk age group (15-29 years old) to the lowest rate since 1970. However, the CalVIP program is set to sunset on January 1, 2025 and the Governor and Legislature must allocate funding for the program each year in the budget.

“AB 1223 will extend the CalVIP Grant Program until January 1, 2028, impose a \$25 excise tax on a retailer for each new handgun, semiautomatic rifle, or shot gun sold, as well as impose an excise tax on ammunition until January 1, 2028. Funds accrued will then be deposited in the CalVIP Firearm and Ammunition Tax Fund in order to provide a reliable and continuous funding source for the CalVIP program to invest in reducing gun-related violence in our communities.”

- 2) **CalVIP Grant Program:** From 2007 to 2017, California’s Budget Acts appropriated \$9.215 million per year to operate the California Gang Reduction, Intervention, and Prevention (CalGRIP) program, which provided matching grants to cities for initiatives to reduce youth and gang-related crime. The Budget Acts guaranteed \$1 million annually for the City of Los Angeles, with the remainder distributed to other cities of all sizes through a competitive application process, overseen by the Board of State and Community Corrections (BSCC). In 2017, the Legislature turned CalGRIP funds into CalVIP funds by shifting the program away from initiatives targeting gang crime and affiliation toward a narrower and more objective focus on evidence-based violence prevention programs.

The 2017 State Budget Act provided \$1 million to the City of Los Angeles and \$8.215 million for other cities and Community Based Organizations (CBOs) to compete for up to \$500,000 each. This Act provided that CalVIP funds could be used for violence intervention and prevention activities, with preference given to applicants that proposed programs that

have been shown to be the most effective at reducing violence and to applicants in cities or regions disproportionately affected by violence. The *Giffords Center to Prevent Gun Violence* publishes additional information about CalGRIP and CalVIP legislation as well as the programs that they fund on its website. (Giffords, <https://giffords.org/2017/06/calvip/>.)

AB 1603 (Wicks) Chapter 735, Statutes of 2019, codified the CalVIP grant program established in the budget, providing a statutory basis for its existence. It also codified the guidelines for the application and approval of grants. This bill would create a firearm excise tax of \$25 per new firearm sold as well as a percentage excise tax on the retail sale of ammunition. Those funds would then be used as a continuous source of funding for CalVIP grants through the CalVIP Firearm and Ammunition Tax Fund, independent of the budget allocations from the Legislature.

- 3) **Existing Fees on Firearms Purchases:** California imposes several fees upon the purchase of a new firearm in the state. The total state fee is \$37.19. The Dealer Record of Sale fee (DROS) is \$31.19. The DROS fee 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.
- 4) **Firearm and Ammunition Excise Tax:** California's excise taxes are flat, per-unit taxes that must be paid by the merchant before specified goods can be sold. Gasoline, cigarettes, cellphones, and cannabis are all subject to excise taxes in California. 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 would impose a \$25 excise tax on the sale of a new firearm in California, and a percentage excise tax on the gross receipt from the sale of ammunition. The provisions of this bill are identical to portions of AB 18 (Levine) of the 2019 – 2020 Legislative Session. Both AB 18 and this bill were double-referred to the Committee on Revenue and Taxation. For additional analysis of this bill's tax policy implications, please refer to the analyses prepared by the Assembly Committee on Revenue and Taxation.

- 5) **Changes to Taxes on Personal Property Require a 2/3 Vote:** The California Constitution provides that the Legislature may impose taxes on all forms of tangible personal property. It further provides that personal property may be reclassified for differential taxation or for exemption upon a 2/3 vote of both houses. This bill has been marked as requiring a 2/3 vote because it would impose a new tax on firearms, a form of tangible personal property.
- 6) **Argument in Support:** According to *Giffords Law Center, et. al.*: “Gun violence is a public health, safety, and equity crisis. Amid a devastating pandemic and economic emergency, and record-setting gun sales in 2020 and 2021, communities across the nation have faced an alarming spike in shootings, homicides, and related traumas. California is no exception . . .

“Across California, thousands of people survive shootings and other violent assaults each year. After these traumatic, life-altering events, most receive treatment for physical wounds, but are then returned to the same frightening circumstances in which they were violently attacked in the first place, while grappling with untreated trauma, toxic stress, and instability.

...

“In recent years, California has made modest but critical investments in effective, community-based responses to violence, largely through the California Violence Intervention and Prevention (CalVIP) grant program.

“CalVIP provides matching grants to community-based violence intervention efforts in communities most impacted by group-related shootings and homicides. CalVIP-supported initiatives focused on protecting and healing individuals at highest risk include hospital-based violence intervention, targeted street outreach, conflict mediation, violence preventive counseling services and peer support, relocation assistance away from dangerous circumstances, and group violence intervention “Ceasefire” initiatives.

...

“Even as CalVIP’s framework has served as a national model, California’s investment in violence prevention has not yet matched the enormity of the challenge our communities face, especially over the past year, or the commitment made by other states.

...

“AB 1223 (Levine) would similarly place a reasonable excise tax on sellers profiting from the commercial sale of firearms, ammunition, and ghost gun kits (“firearm precursor parts”) in order to generate sustained revenue for programs that are specifically focused at remediating the devastating effects these products cause human 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 externalities on California’s families, communities, and taxpayers.

“The modest tax proposed in this measure is smaller than 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; a research review by the Rand Corporation noted that “research suggests that moderate tax increases on guns or ammunition would do little to disrupt hunting or recreational gun use.”

“As an organization dedicated to making all people safer and freer from violence, we are strongly supportive of efforts to provide sustained, meaningful investment in programs like CalVIP that are effective at interrupting cycles of gun violence and preventing shootings before they occur.”

- 7) **Argument in Opposition:** According to *Gun Owners of California*: “We oppose this legislation from a foundational perspective in that taxing an enumerated right is not only unconstitutional, but is strongly prejudicial. Why would anyone want to penalize the law abiding, who are engaging in a perfectly legal financial transaction of a perfectly legal product? Conversely, if your proposal sought to levy a special tax on someone who had committed a crime while using a firearm, that at least bears a nexus to the problem you aim to solve. Penalizing the lawful for the misdeeds of the unlawful seems misdirected and punitive.

“If the Legislature chooses to raise and expend resources to address violence of any kind – gun-related or otherwise, shouldn’t that be a cost borne by the whole of California’s tax-payers – rather than singling out those who choose to purchase a firearm? After all, the overwhelming majority of firearms used in crimes are either stolen or secured on the black market by thieves. In fact, according to the 2019 U.S. Department of Justice Report on the “Source and Use of Firearms involved in Crimes” only 1.3% obtained the gun from retail source, and these people are not the ones who are committing the crimes.

“Our organization has a 40-year history of fighting for effective crime control and opposing ineffective gun control. The safety of Californians is at the very foundation of our mission, and it has been our consistent goal to work toward common sense solutions regarding the issue of crime and firearm ownership; this can be done, however, without sacrificing our Constitutional rights and the ability of the law abiding to protect their families.

8) **Prior Legislation:**

- a) AB 18 (Levine) of the 2019 – 2020 Legislative Session would have imposed an excise tax in the amount of \$25 on the sale of a new firearm. AB 18 was held in the Assembly Appropriations Committee.
- b) AB 1603 (Wicks) Chapter 735, Statutes of 2019, codified the establishment of the California Violence Intervention and Prevention Grant Program (CalVIP) and the authority and duties of the board in administering the program, including the selection criteria for grants and reporting requirements to the Legislature.
- c) AB 1669 (Bonta) Chapter 736, Statutes of 2019, among other things, increased the Dealer Record of Sale fee (DROS) for firearm purchases from \$14 to \$32.19
- d) SB 934 (Allen), of the 2017-2018 Legislative Session, would have codified the CalVIP grant program. SB 934 died in the Senate Appropriations Committee.
- e) AB 97 (Ting) Chapter 14, Statutes of 2017, was the Budget Act of 2017; among other things, provided more than nine million dollars (\$9,000,000) to the Board of State and Community Corrections for the purpose of administering CalVIP grants to cities and community-based organizations for violence intervention and prevention activities.

REGISTERED SUPPORT / OPPOSITION:

Support

Advance Peace
Brady United Against Gun Violence
California Partnership for Safe Communities
City of Richmond
Community Justice Action Fund
Everytown for Gun Safety Action Fund
Fresno Barrios Unidos
Giffords Law Center

March for Our Lives California
Mom's Demand Action
National Association of Pediatric Nurse Practitioners, Los Angeles
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
Public Health Advocates
Shephat Outreach
Soledad Enrichment Action, INC.
Students Demand Action
Team Enough
Urban Peace Institute
Youth Alive!

Oppose

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 Houndsmen for Conservation
California Rifle and Pistol Association, INC.
California Sportsman's Lobby, INC.
California Waterfowl Association
Dooley Enterprises INC.
Gun Owners of California, INC.
Miwall Corp.
Nor-cal Guides and Sportsmen's Association
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California (PORAC)
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

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