

Case No. 24-4050

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In the United States Court of Appeals  
for the Ninth Circuit

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JUNIOR SPORTS MAGAZINES INC., et al.,  
*Plaintiffs-Appellants,*

v.

ROB BONTA,  
in his official capacity as Attorney General of the State of California,  
*Defendant-Appellee.*

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On Appeal from the United States District Court  
for the Central District of California  
Case No. 2:22-cv-04663-CAS-JC

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**PLAINTIFFS-APPELLANTS'  
FURTHER EXCERPTS OF RECORD  
VOLUME I OF I**

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September 17, 2024

FER001

Per Ninth Circuit rule 30-1.5, Plaintiffs-Appellants Junior Sports Magazines Inc., Raymond Brown, California Youth Shooting Sports Association, Inc., Redlands California Youth Clay Shooting Sports, Inc., California Rifle & Pistol Association, Incorporated, The CRPA Foundation, Gun Owners of California, and Second Amendment Foundation submit the following Further Excerpts of Record, filed concurrently with their Reply Brief.

### Volume I of I

<b>Date</b>	<b>ECF</b>	<b>Description</b>	<b>Page</b>
10/07/2022	32	Defendant's Supplemental Briefing in Further Support of His Opposition to Plaintiffs' Motion for Preliminary Injunction	FER004
09/28/2022	30	Plaintiffs' Supplemental Brief in Support of Motion for Preliminary Injunction	FER020
08/19/2022	26	Plaintiffs' Sur-Reply In Support of Plaintiffs' Motion for Preliminary Injunction	FER042
07/20/2022	12-14	[Proposed] Order Granting Plaintiffs' Motion for Preliminary Injunction	FER048
07/20/2022	12-2	Request for Judicial Notice in Support of Plaintiffs' Motion for Preliminary Injunction	FER050

Date: September 17, 2024

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California Youth Clay Shooting Sports, Inc.,  
California Rifle & Pistol Association,  
Incorporated, The CRPA Foundation, and Gun  
Owners of California, Inc.*

Date: September 17, 2024

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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

**JUNIOR SPORTS MAGAZINES  
INC. ET AL.,**  
  
v.  
  
**ROB BONTA, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY  
GENERAL OF THE STATE OF  
CALIFORNIA ET AL.,**

**DEFENDANT’S SUPPLEMENTAL  
BRIEFING IN FURTHER  
SUPPORT OF HIS OPPOSITION  
TO PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION**

Date: October 17, 2022  
Time: 10:00 a.m.  
Courtroom: 8D  
Judge: Christina A. Snyder  
Action Filed: July 8, 2022

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**TABLE OF CONTENTS**

	<b>Page</b>
Introduction.....	1
Background.....	2
A. The Passage of Amendments to AB 2571.....	2
B. The Amendments.....	2
Argument.....	3
I. The Amendments to AB 2571 Remove Any Doubt that Plaintiffs Are Unlikely to Succeed on the Merits of Their First Amendment and Equal Protection Claims.....	3
A. The Amendments Make Clear That AB 2571 Solely Regulates Commercial Speech. ....	3
B. Plaintiffs Have Not Established That AB 2571 Would Operate to Restrict Their Ability to Host and Sponsor Competitive Shooting and Hunting Programs.....	7
C. AB 2571 Is a Constitutional Regulation of the Commercial Speech It Prohibits.....	8
II. Plaintiffs Cannot Establish Irreparable Harm in the Absence of Injunctive Relief.....	11
III. The Balance of Equities, Which Includes Analysis of the Public Interest, Tips Against an Injunction.....	12
Conclusion.....	13

1  
2  
3  
4  
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6  
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**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Babbit v. United Farm Workers Nat. Union*,  
442 U.S. 289 (1979) ..... 4

*Brown v. Entertainment Merchants Ass’n*,  
564 U.S. 786 (2011) ..... 11

*Carey v. Population Services Int’l*,  
431 U.S. 678 (1977) ..... 10

*Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*,  
447 U.S. 557 (1980) ..... 8

*Lorillard Tobacco Co. v. Reilly*,  
533 U.S. 525 (2001) ..... 11

*New York State Rifle Ass’n v. Bruen*,  
\_\_ U.S. \_\_, 142 S. Ct. 2111 (2022) ..... 11

**Statutes**

Cal. Bus. & Prof. Code § 22949.80 ..... *passim*

Cal. Pen. Code § 27505 ..... 9

Cal. Pen. Code § 27510 ..... 9

Cal. Pen. Code § 29610 ..... 9

Cal. Pen. Code § 29615 ..... 9

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**INTRODUCTION**

In the first round of briefing related to Plaintiffs’ motion for preliminary injunction in this case, Defendant detailed the manner in which AB 2571 operates constitutionally to prohibit communications advertising or marketing firearm-related products in a way that is designed, intended to, or reasonably appears to be attractive to minors. The recent amendments to AB 2571 do not alter the manner in which the law should be read or applied, nor do they alter its inherent constitutionality, but they do serve to obviate many of Plaintiffs’ arguments in support of their assertions that the law impermissibly infringes on their First and Fourteenth Amendment rights.

For example, the amended AB 2571 makes clear that it does not bar speech merely endorsing or recommending the non-commercial use of firearm-related products by minors, and Plaintiffs have not established it would actually impede their ability to host events at which firearm-related products are merely discussed. Moreover, the law now explicitly exempts all of the types of communications that several of the Plaintiffs claimed it barred them from engaging in, obviating their claims entirely.

Plaintiffs’ claims that the law remains vague and overbroad despite the amendments are unavailing. Several of the terms that Plaintiffs argued swept up both commercial and non-commercial speech have been replaced or removed, confirming that the law’s intent is to regulate commercial speech regarding the marketing and advertising of firearm-related products themselves. As such, it is a constitutional regulation of commercial speech that is misleading and relates to illegal conduct – the sale of firearms to minors, which remains illegal, and the possession of firearms by minors, which remains illegal unless specific qualifying circumstances present. And even if it did not, it satisfies intermediate scrutiny, as Defendant established in earlier briefing.

**BACKGROUND**

**A. The Passage of Amendments to AB 2571**

Subsequent to the parties’ initial briefing on Plaintiffs’ preliminary injunction motion, the California Legislature voted to approve AB 160, “Public Safety Trailer Bill.” *See* Defendant’s Status Conference Statement ¶ 3-4 & Exhs. A, B (ECF 28). AB 160 contained multiple amendments to the language of AB 2571. *See id.* The Governor signed AB 160 into law on September 29, 2022, and the amendments became effective immediately. *See* Cal. Bus. & Prof. Code § 22949.80.

**B. The Amendments**

AB 160 made various clarifying changes to AB 2571. First, it made the below edit to subsection (a)(1):

(a) (1) A firearm industry member shall not advertise, market, or arrange for placement of an advertising or marketing communication ~~concerning~~ **offering or promoting** any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.

Next, it added subsection (a)(3):

(3) This subdivision does not apply to a communication offering or promoting any firearm safety program, hunting safety or promotional program, firearm instructional course, sport shooting event or competition, or any similar program, course, or event, nor does it apply to a communication offering or promoting membership in any organization, or promotion of lawful hunting activity, including, but not limited to, any fundraising event, youth hunting program, or outdoor camp.

Finally, it made the below edits to subsection (c)(6):

(6) “Marketing or advertising” means, in exchange for monetary compensation, to make a communication to one or more individuals, or to arrange for the dissemination to the public of a communication, about a product ~~or service~~, the primary purpose of which is to encourage recipients of the communication to



~~purchase or use the product or service~~ engage in a commercial transaction.

See Plaintiffs’ Ex Parte Application for Leave to File Supplemental or Sur-Reply Brief in Support of Plaintiffs’ Motion for Preliminary Injunction, Declaration of Anna M. Barvir in Support, Exh. 2; Cal. Bus. & Prof. Code § 22949.80.

**ARGUMENT**

**I. THE AMENDMENTS TO AB 2571 REMOVE ANY DOUBT THAT PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR FIRST AMENDMENT AND EQUAL PROTECTION CLAIMS.**

**A. The Amendments Make Clear That AB 2571 Solely Regulates Commercial Speech.**

**1. Speech Merely Endorsing or Recommending Firearm-Related Products Does Not Constitute “Marketing or Advertising” as Defined by the Law.**

Plaintiffs state that Raymond Brown (“Brown”) and California Rifle and Pistol Association, Incorporated (“CRPA”) offer firearms training and safety programs and hunter’s education courses. See Plaintiffs’ Supp. Brief at 5. Plaintiffs California Youth Clay Shooting Sports, Inc. (“CYCSS”) and Redlands California Youth Clay Shooting Sports, Inc. (“RCYCSS”) offer youth clay shooting programs and events. See Plaintiffs’ Supplemental Brief in Support of Motion for Preliminary Injunction (“Plaintiffs’ Supp. Brief”) at 5; Supplemental Declaration of Jonathan L. Coleman in Support of Plaintiffs’ Motion for Preliminary Injunction (“Coleman Supp. Dec.”) ¶ 2; Declaration of Allison Rangel (“Rangel Dec.”) ¶ 3.

Plaintiffs now concede that AB 2571 allows Plaintiffs Brown, CRPA, RCYCSS, and CYSSA to advertise their programs to minors. See Plaintiffs’ Supp. Brief at 2-3. They also concede that it allows CRPA and SAF to engage in communications promoting junior memberships in their organizations. See *id.* at 2. However, Plaintiffs claim that AB 2571 still “does not exempt the speech that takes place” at the events and courses held by Brown and CRPA, which “inherently

1 include speech promoting firearm-related products, including recommendations  
2 about specific products.” *See id.* at 5. Similarly, they claim that CYSSA’s and  
3 RCYCSS’s “volunteers and affiliated coaches and trainers will still be prohibited  
4 from endorsing, promoting, or suggesting that their young athletes obtain firearm-  
5 related products necessary for their success in the shooting sports,” and that they  
6 will be “barred from endorsing a specific brand of ammunition or a particular  
7 firearm that works best for young and smaller athletes without violating the law.”  
8 *See id.* They also claim that AB 2571 bars Plaintiffs Junior Sports Magazines, Inc.  
9 and CRPA from publishing articles by youth shooters “endorsing specific firearms  
10 or ammunition appropriate for competitive shooting applications by youth and  
11 smaller shooters.” *See id.* at 4.<sup>1</sup>

12  
13 <sup>1</sup> While not addressed in their briefing, Plaintiffs submit supplemental  
14 declarations from representatives of Gun Owners of America, Inc. (“GOC”) and  
15 Second Amendment Foundation (“SAF”). GOC asserts that it sponsors and supports  
16 youth shooting teams by raising and contributing financial resources, offers  
17 scholarship programs to youth shooters, and communicates directly with minors  
18 regarding these activities. *See* Supplemental Declaration of Sam Paredes in Support  
19 of Plaintiffs’ Motion for Preliminary Injunction (“Paredes Supp. Dec.”) ¶¶ 2-3. SAF  
20 states that it publishes “Second Amendment materials” depicting youth engaged in  
21 activities where they are using firearm-related products, promotes recreational and  
22 competitive shooting events, reaches out to people who play video games to grow  
23 the Second Amendment community, and distributes SAF-branded merchandise and  
24 giveaways. *See* Supplemental Declaration of Alan Gottlieb in Support of Plaintiffs’  
25 Motion for Preliminary Injunction (“Gottlieb Supp. Dec.”) ¶¶ 2, 4.

26 All of these types of communications, as described by GOC and SAF, are  
27 explicitly exempt from AB 2571. *See* Cal. Bus. & Prof. Code § 22949.80(a)(3)  
28 (exempting communications promoting hunting safety or promotional programs,  
sport shooting events and competitions, memberships in any organizations and  
similar programs, courses, and events, as well as lawful hunting activity, including  
fundraising events). To the extent these declarations offer legal conclusions that the  
amendments “do very little to address the vagueness and overbreadth concerns” and  
claim they “remain unsure exactly what speech is prohibited” (*see* Paredes Supp.  
Dec. ¶ 6; Gottlieb Supp. Dec. ¶ 6), they fail to articulate the type of speech they  
wish to engage in but are unsure about. *See Babbit v. United Farm Workers Nat.*

1 The plain language of the amended AB 2571 refutes all of these notions.  
2 Plaintiffs have not alleged facts establishing that these communications would  
3 constitute “marketing or advertising” under the law – that is, that they would be  
4 made “in exchange for monetary compensation” – even assuming Plaintiffs’  
5 reading of what that phrase modifies is the correct one. *See* Reply to Defendant’s  
6 Opposition to Plaintiffs’ Motion for Preliminary Injunction (“Plaintiffs’ Reply”) at  
7 7-8. Moreover, they do not establish that their “primary purpose” would be to  
8 “encourage recipients of the communication[s] to engage in a commercial  
9 transaction.” *See* Cal. Bus. & Prof. Code § 22959.80(c)(6). At most, these  
10 communications would merely encourage the use of such products – “use” being a  
11 term that has been specifically removed from the relevant section of the law. As  
12 such, Plaintiffs have not shown that they are at any risk of liability under the  
13 amended statute for engaging in any of these forms of constitutionally protected  
14 speech.

15 **2. AB 2571 Is Neither Vague Nor Overbroad.**

16 In their initial briefing, Plaintiffs claimed that the language of AB 2571 was  
17 overbroad insofar as it swept up both commercial and non-commercial speech.  
18 Plaintiffs largely relied on language in the law addressing certain communications  
19 “concerning” firearm-related products (*see* Plaintiffs’ Memo at 3, 11;15; Plaintiffs’  
20 Reply at 7) and whose primary purpose was to promote their “use” (*see* Plaintiffs’  
21 Memo at 3-4, 11, 17). They also argued the use of the word “service” extended the

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24 \_\_\_\_\_  
25 *Union*, 442 U.S. 289, 299 (1979) (“When plaintiffs ‘do not claim that they have  
26 ever been threatened with prosecution, that a prosecution is likely, or even that a  
27 prosecution is remotely possible,’ they do not allege a dispute susceptible to  
28 resolution by a federal court.” (quoting *Younger v. Harris*, 401 U.S. 37, 42 (1971));  
*see also Wright v. Serv. Emp. Int’l Union Local 503* (holding that the plaintiff’s fear  
of future harm based on speculation was insufficient to support First Amendment  
standing).

1 law’s reach to non-commercial speech, including speech related to competitive and  
2 recreational youth shooting events. *See* Reply at 4, n. 1.

3 As explained in the initial opposition to the preliminary injunction motion, this  
4 was an incorrect reading of the statute, but the Legislature’s recent action has  
5 removed any possible doubt on the question. With the amendment of AB 2571, all  
6 of these terms have been removed or replaced. “Concerning” has been replaced by  
7 the terms “offering or promoting,” words that make clear that the law addresses  
8 commercial speech, and “use” and “service” have been removed completely from  
9 the relevant subsection. Plaintiffs’ characterizations of these changes as “non-  
10 substantive” (*see* Plaintiffs’ Supp. Brief at 3) and “trivial” (*see id.* at 4) are  
11 untenable in light of their earlier arguments. Moreover, the law now *explicitly*  
12 *exempts* certain categories of non-commercial speech, many of which Plaintiffs  
13 claim they regularly engage in, and it explicitly states that it applies only to  
14 communications whose “primary purpose” is to “encourage recipients . . . to engage  
15 in a commercial transaction.”

16 Plaintiffs now claim that these amendments have somehow made the law “in  
17 many ways *more vague and more overbroad.*” *See* Plaintiffs Supp. Brief at 6  
18 (emphasis in original). In support, they cite only two examples from the text, the  
19 first of which is not one of the recently-enacted amendments. Indeed, their first  
20 example – the phrase “designed, intended, or reasonably appears to be attractive to  
21 minors” – was included in the law as it was originally enacted and was already  
22 addressed by the parties in the earlier round of briefing.

23 Their second example, “any similar program, course, or event,” is presented in  
24 their brief without any of its surrounding context. That phrase should be viewed in  
25 conjunction with the lengthy list of exempted communications set forth in the  
26 subsection. All of those types of communications – including those offering or  
27 promoting firearm safety programs, hunting programs, instructional courses, sport  
28 shooting programs, organizational membership initiatives, fundraising events, and

1 outdoor camps – share common features. None of them would constitute  
2 “marketing or advertising” of a “firearm-related product” as defined by the law,  
3 even if they might concern activities where firearm-related products may be used,  
4 discussed, or promoted with minors involved. This commonality makes “any  
5 similar program, course, or event” readily understandable.

6 In this way, the new subsection merely serves to provide specific illustrative  
7 examples of what the law does *not* apply to, to the extent individuals like Plaintiffs  
8 claim they may be confused about it. Taken as a whole, the cumulative effect of the  
9 amendments is to make clear that AB 2571 solely and narrowly regulates  
10 commercial speech related to the advertising and marketing of firearm-related  
11 products themselves, and not other ancillary firearm-related activities, such as  
12 promoting educational activities or junior sports events.

13 **B. Plaintiffs Have Not Established That AB 2571 Would Operate**  
14 **to Restrict Their Ability to Host and Sponsor Competitive**  
15 **Shooting and Hunting Programs.**

16 Plaintiffs also claim that even as amended AB 2571 continues to restrict the  
17 ability of CRPA and CRPAF to host and sponsor competitive shooting and hunting  
18 programs for youth.<sup>2</sup> *See* Plaintiffs’ Supp. Brief at 5-6. In support, they assert that  
19 these events “regularly involve signage, flyers, discussions, branded merchandise,  
20 giveaways, and other communications that promote or offer firearm-related  
21 products.” *See* Plaintiffs’ Supp. Brief at 5. They also point to the fact that these  
22 events are financially supported by firearm sellers and manufacturers of firearm-  
23 related products that use “vendor booth space, banners, logo placement, or other  
24 forms of advertising at these events in exchange for their financial support,” and

25 \_\_\_\_\_  
26 <sup>2</sup> In the relevant section of their brief, Plaintiffs do not specify which of them  
27 wishes to host and sponsor these events. *See* at 5-6. However, since the arguments  
28 in their brief are supported by declarations submitted by representatives for  
plaintiffs CRPA (*see* Gomez Supp. Dec. ¶ 1) and CRPAF (*see* Minnich Supp. Dec.  
¶ 1), Defendant assumes that these arguments are submitted on behalf of those  
parties.

1 that some of these sponsors place their logos on youth competitors’ uniforms and  
2 commemorative t-shirts. *See id.*

3 But Plaintiffs fail to submit specific facts establishing that the amended AB  
4 2571 would operate to actually restrict any of these events. *See Wright*, \_\_ F.4th \_\_,  
5 2022 WL 4295626, at \*3 (observing that a plaintiff “has standing to sue only ‘if the  
6 threatened injury is ‘certainly impending,’ or there is a ‘substantial risk that the  
7 harm will occur’” (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158,  
8 (2014)). For example, Plaintiffs have not alleged that any vendors intend to  
9 withdraw their support of these events altogether, that they could not appear at them  
10 in a way that would comply with the new law, or that Plaintiffs would be unable to  
11 hold these events without support from vendors marketing firearms-related products  
12 to children. Simply because vendors may not include advertising or marketing  
13 communications “designed, intended, or reasonably appearing to be attractive to  
14 minors” at these events does not preclude them from otherwise sponsoring or  
15 advertising at them, so long as they do so in a way that does not run afoul of AB  
16 2571. As such, this argument fails.

17 **C. AB 2571 Is a Constitutional Regulation of the Commercial**  
18 **Speech It Prohibits.**

19 As established above, the new amendments are consistent with Defendant’s  
20 original position that AB 2571 solely regulates commercial speech – that is,  
21 “speech proposing a commercial transaction.” *See Cent. Hudson Gas & Elec. Corp.*  
22 *v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 562 (1980). And for the reasons  
23 set forth in Defendant’s earlier motion briefing, the law is constitutional under the  
24 *Central Hudson* test because (1) it regulates unlawful and misleading speech that is  
25 not protected by the First Amendment, namely advertising and marketing that  
26 promotes the sale to and purchase of firearms by minors, who may not possess  
27 them except under limited circumstances and for limited purposes; and (2) even  
28

1 assuming it regulates commercial speech that is protected, it satisfies intermediate  
2 scrutiny.

3 Nevertheless, Plaintiffs contend that the addition of a non-exhaustive list of  
4 communications exempt from the law under subsection (c)(3) constitutes a  
5 “concession” that “even if they must do so under adult supervision or with parental  
6 consent, minors may legally handle and shoot firearms in California.” *See*  
7 Plaintiffs’ Supp. Brief at 7-8. They claim that this “concession” undermines  
8 Defendant’s argument that AB 2571 regulates misleading speech concerning  
9 unlawful activity. *See id.* They also argue that through the addition of this  
10 subsection, Defendant has “flitted away whatever meager justification it might have  
11 had to forbid the dissemination and receipt of communications advertising the  
12 availability of lawful firearm-related products necessary for minors to engage in”  
13 lawful firearm-related activities, and thus AB 2571 does not directly and materially  
14 advance a substantial government interest. *See id.* at 7-11.

15 But Defendant has never disputed that there are limited situations in which  
16 minors may lawfully use and possess certain firearm-related products. But there is  
17 also no dispute that it is illegal to *sell* a firearm to a minor under any circumstances  
18 and that it is illegal to loan or transfer one to a person under 21 years of age, subject  
19 to narrow exceptions. *See* Cal. Pen. Code §§ 27505, 27510, & 29615. Moreover,  
20 the “baseline” rule is that minors are prohibited from possessing a handgun, a  
21 semiautomatic centerfire rifle, and, as of July 1, 2023, any firearm. *See* Cal. Pen.  
22 Code § 29610. Thus, Plaintiffs’ assertion that “minors may lawfully use” firearm-  
23 related products (*see* Plaintiffs’ Supp. Brief at 9) does not correctly capture  
24 California’s laws governing the possession of firearms by minors in California.

25 Defendant’s point has always been that since the sale of firearms directly to  
26 minors is never permitted, and the possession of a firearm by a minor is allowed  
27 only under limited and well-defined circumstances, to permit marketing or  
28 advertising those items in a way that is appealing to minors – even if there are

1 limited exceptions to those baseline rules – would not be rational or consistent with  
2 that overarching and longstanding policy. Therefore, Plaintiffs’ contention that the  
3 law does not materially or directly advance the State’s substantial interests because  
4 it “acknowledges that minors can lawfully enjoy the shooting sports in California”  
5 while “punishing” those who seek to provide minors with information about the  
6 products necessary to engage in them (*see* Plaintiffs’ Supp. Brief at 8-9) is  
7 unavailing. If anything, the prohibited communications signal to minors and others  
8 who may be unaware of the contours of the law that such conduct is permitted. That  
9 AB 2571 now explicitly exempts certain communications related to the exceptions  
10 to these rules does not conflict with that policy in a way that it might if the statutory  
11 scheme granted minors an unfettered right to possess firearms in California under  
12 any circumstances.

13 The law is thus far from “exactly backwards” or working “indirectly” to  
14 address the problem of illegal firearm possession and use by minors. *See* Plaintiffs’  
15 Supp. Brief at 9-10; *cf. Carey v. Population Services Int’l*, 431 U.S. 678, 701-02  
16 (1977) (invalidating restrictions on advertisements of contraceptive products where  
17 such advertisements were not “misleading or deceptive” or proposed transactions  
18 that “are themselves illegal in any way”). The amendments underline the fact that  
19 AB 2571 permissibly regulates commercial speech that is misleading and concerns  
20 illegal activity, and that it directly serves that purpose.

21 Lastly, Plaintiffs essentially reiterate the arguments in their original briefing  
22 when they assert that despite the amendments, “[t]he law is still overbroad because  
23 it targets speech directed at adults if it might reasonably be said to be attractive to  
24 minors, even [sic] the products are lawful for minors to use.” *See* Plaintiffs’ Supp.  
25 Brief at 13. As Defendant previously established, the law narrowly regulates  
26 advertising that is “designed, intended, or reasonably appears to be attractive to  
27 minors,” which is analyzed by a “totality of circumstances” test, a test that courts  
28 routinely apply in other contexts. The law includes specific illustrative examples to



1 assist courts and the public in this analysis, and the idea that, at the margins, one or  
2 more of these characteristics might also appeal to an adult should not serve to  
3 invalidate the entire scheme.

4 For the same reasons, the law is wholly distinguishable from the challenged  
5 law in *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001), a decision which  
6 Plaintiffs discuss at length. *See* Plaintiffs’ Supp. Brief at 12-13. The Supreme Court  
7 in that case invalidated Massachusetts’ effort to discourage tobacco use by minors  
8 by instituting a much broader ban on “any oral, written, graphic, or pictorial  
9 statement or representation . . . the purpose or effect of which is to promote the use  
10 or sale of the product” – that is, without regard to any attractiveness to minors –  
11 outdoors and within 1,000 feet of a school or playground. *See Lorillard*, 533 U.S. at  
12 536 (2001). In contrast, AB 2571 operates much more narrowly to address its  
13 concerns. Distinguishable too is *Brown v. Entertainment Merchants Ass’n*, 564 U.S.  
14 786 (2011), since it invalidated content-based restrictions on *non-commercial*  
15 speech that “communicate[d] ideas – and even social messages – through many  
16 familiar literary devices (such as characters, dialogue, plot, and music) and through  
17 features distinctive to the medium[.]” *See Brown*, 564 U.S. at 790. As such, the  
18 restrictions were subject to the most demanding standard of review – strict scrutiny  
19 – which is not the appropriate standard here and which AB 2571 need not satisfy.<sup>3</sup>

20 **II. PLAINTIFFS CANNOT ESTABLISH IRREPARABLE HARM IN THE ABSENCE**  
21 **OF INJUNCTIVE RELIEF.**

22 Even if Plaintiffs had demonstrated a likelihood of success on the merits, they  
23 would still need to demonstrate that they would suffer irreparable harm if an

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24 <sup>3</sup> Plaintiffs briefly mention the Supreme Court’s recent Second Amendment  
25 decision in *New York State Rifle Ass’n v. Bruen*, \_\_\_ U.S. \_\_\_, 142 S. Ct. 2111  
26 (2022), to argue that AB 2571 should be subjected to the same historical analysis  
27 employed in that case. No Second Amendment claim has been pled in the instant  
28 matter, and Plaintiffs admit that “the constitutional contours of regulations on  
minors’ access to actual firearms” are not at issue. *See* Plaintiffs’ Supp. Brief at 9.  
Therefore, the Court need not apply *Bruen* here.

1 injunction were not issued pending resolution of their claims on the merits. As  
2 Defendant established in his original opposition and further detail here, Plaintiffs  
3 are not likely to succeed on the merits because AB 2571 does not unconstitutionally  
4 burden any of their constitutional rights. And aside from conjecture and  
5 speculation, they have not alleged sufficient facts showing that AB 2571 would  
6 prevent them from engaging in the publishing and event activities they wish to  
7 engage in. For the same reason, they cannot show they will suffer irreparable harm  
8 if their motion is denied.

9 **III. THE BALANCE OF EQUITIES, WHICH INCLUDES ANALYSIS OF THE**  
10 **PUBLIC INTEREST, TIPS AGAINST AN INJUNCTION.**

11 Finally, the balance of the equities weighs against a preliminary injunction. As  
12 Defendant earlier established, AB 2571 promotes the State’s compelling interests in  
13 ensuring that minors do not illegally possess dangerous weapons and in protecting  
14 its citizens, especially minors, from gun violence and intimidation. *See* Defendant’s  
15 Opposition to Plaintiffs’ Motion for Preliminary Injunction at 20. Moreover, the  
16 significance of the harm that could result from the improper issuance of an  
17 injunction would be substantial, and the relief sought by Plaintiffs here is the same  
18 relief that Plaintiffs would obtain after summary judgment or a trial (*see id.* at 21-  
19 22), weighing heavily against issuance of a preliminary injunction.  
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**CONCLUSION**

For the foregoing reasons and those set forth in Defendant’s initial opposition, this Court should deny Plaintiffs’ request for a preliminary injunction.

Dated: October 7, 2022

Respectfully submitted,

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13 IN THE UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 JUNIOR SPORTS MAGAZINES  
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16 CALIFORNIA YOUTH SHOOTING  
SPORTS ASSOCIATION, INC.,  
17 REDLANDS CALIFORNIA  
YOUTH CLAY SHOOTING  
18 SPORTS, INC., CALIFORNIA  
RIFLE & PISTOL ASSOCIATION,  
19 INCORPORATED, THE CRPA  
FOUNDATION, AND GUN  
20 OWNERS OF CALIFORNIA, INC.;  
21 and SECOND AMENDMENT  
FOUNDATION,

CASE NO: 2:22-cv-04663-CAS (JCx)

**PLAINTIFFS' SUPPLEMENTAL  
BRIEF IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing Date: October 17, 2022  
Hearing Time: 10:00 a.m.  
Courtroom: 8D  
Judge: Christina A. Snyder

22 Plaintiffs,  
23 v.  
24 ROB BONTA, in his official capacity  
as Attorney General of the State of  
25 California; and DOES 1-10,  
26 Defendant.

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**TABLE OF CONTENTS**

	<b>Page</b>
Table of Contents.....	i
Table of Authorities.....	ii
Introduction.....	1
Argument .....	2
I. AB 160 Does Not Save California’s Firearm-speech Ban; The Law Still Violates Plaintiffs’ Rights Under the First Amendment.....	2
A. Even If AB 160 Takes Effect, AB 2571 Is Still a Content- and Viewpoint-based Restriction on Plaintiffs’ Commercial and Non-commercial Speech .....	2
B. AB 2571 Cannot Survive Any Level of Judicial Scrutiny Applicable to Restrictions on Protected Speech.....	7
1. Subsection (c)(3), AB 160’s exemption for speech promoting certain lawful activities, confirms that AB 2571 restricts nonmisleading commercial speech about lawful activities. ....	7
2. AB 2571 does not directly or materially advance the State’s purported public safety interest .....	8
3. AB 2571 is far more extensive than necessary to promote the State’s purported public safety interests.....	11
II. AB 2571 Also Violates Plaintiffs’ Right to Equal Protection .....	15
III. The Other Preliminary Injunction Factors Favor Relief .....	15
Conclusion .....	16

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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**Page(s)**

**Cases**

*44 Liquormart v. Rhode Island*,  
517 U.S. 484 (1996) ..... 10, 12

*Ashcroft v. Am. Civ. Libs. Union*,  
535 U.S. 564 (2002) ..... 14

*Brandenburg v. Ohio*,  
395 U.S. 444 (1969) ..... 10

*Brown v. Entertainment Merchants Ass’n*,  
564 U.S. 786 (2011) ..... 13, 14

*Carey v. Population Services Int’l*,  
431 U.S. 678 (1977) ..... 10, 12, 13

*Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*,  
447 U.S. 557 (1980) ..... 11

*Chaplinsky v. New Hampshire*,  
315 U.S. 568 (1942) ..... 14

*Dariano v. Morgan Hill Unif. Sch. Dist.*,  
767 F.3d 764 (9th Cir. 2014) ..... 15

*Edge v. City of Everett*,  
929 F.3d 657 (9th Cir. 2019) ..... 6

*Erznoznik v. Jacksonville*,  
4322 U.S. 205 (1975) ..... 14

*Lorillard Tobacco Co. v. Reilly*,  
533 U.S. 525 (2001) ..... 12, 13

*N.Y. State Rifle & Pistol Ass’n v. City of New York (NYSRPA)*,  
\_\_ U.S. \_\_, 140 S. Ct. 1525 (2019) ..... 1

*N.Y. State Rifle & Pistol Ass’n v. Bruen*,  
\_\_ U.S. \_\_, 142 S. Ct. 2111 (2022) ..... 14

*Pittsburgh Press Co. v. Human Relations Comm’n*,  
413 U.S. 376 (1973) ..... 10

1 *Police Dep’t of Chic. v. Mosley,*  
 408 U.S. 92 (1972) ..... 15

2  
 3 *Reed v. Town of Gilbert,*  
 576 U.S. 155 (2015) ..... 7

4  
 5 *Rubin v. Coors Brewing Co.,*  
 514 U.S. 476 (1995) ..... 11

6  
 7 *Sorrell v. IMS Health Inc.,*  
 564 U.S. 552 (2011) ..... 9, 10

8  
 9 *Thompson v. W. States Med. Ctr.,*  
 535 U.S. 357 (2002) ..... 12

10  
 11 *Tracy Rifle & Pistol LLC v. Harris,*  
 339 F. Supp. 3d 1007 (E.D. Cal. 2018) ..... 11, 12

12  
 13 *United States v. Edge Broad. Co.,*  
 509 U.S. 418 (1993) ..... 10

14  
 15 *Va. Pharm. Bd. v. Va. Citzs. Consumer Council,*  
 425 U.S. 748 (1976) ..... 10

16  
 17 *Valle Del Sol v. Whiting,*  
 709 F.3d 808 (9th Cir. 2013) ..... 11

18 **Statutes**

19 Cal. Bus. & Prof. Code § 22949.80 .....*passim*

20 Cal. Pen. Code § 25100 ..... 12

21 Cal. Pen. Code § 27510 ..... 12

22 Cal. Pen. Code § 29615 ..... 8

23 Cal. Pen. Code § 29655 ..... 8

24 **Other Authorities**

25 Lewis Carroll,  
 26 *Through the Looking-Glass and What Alice Found There* ..... 9

27 U.S. Const., amend. I .....*passim*

28 U.S. Const., amend. II ..... 14

1	U.S. Const., amend. XIV .....	1, 15
2		
3		
4		
5		
6		
7		
8		
9		
10		
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12		
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### INTRODUCTION

A supplemental round of briefing became necessary when the state of California, rather than defend the law they urgently enacted, decided to not-so-urgently<sup>1</sup> change the law. This is a tactic denied to run-of-the-mill defendants but is an increasingly favored tactic by sovereign-defendants facing stiff odds defending their unconstitutional policies. *See generally, N.Y. State Rifle & Pistol Ass’n v. City of New York (NYSRPA)*, \_\_U.S.\_\_, 140 S. Ct. 1525 (2019). Unlike the defendants in *NYSRPA*, the government here has not (yet) claimed that the change in law moots the controversy. Their lawyers, in a valiant but futile effort, instead claim that the amendments made to AB 2571, by AB 160, merely remove doubt and clarify the law by making explicit some exemptions that they claim were already implicit in the original text. Barvir Decl. Supp. Pls.’ Ex Parte App. (ECF No. 23), Ex. 1.

Even if creating a carve-out for censorship somehow “clarifies” an inherently flawed policy, Plaintiffs contend that even this “new-and-improved” AB 2571<sup>2</sup> fails to respect the First Amendment. This Court should be skeptical too. AB 160 made only three edits to the State’s ban on firearm-related speech. Two were non-substantive word swaps. The third was the addition of a new subsection that, far from helping the State, supports Plaintiffs’ arguments that this law is fundamentally flawed on First and Fourteenth Amendment grounds. AB 160 did not fix AB 2571. It sealed its fate as an irrational and unconstitutional law.

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<sup>1</sup> As of filing, Assembly Bill 160 has still not been signed by the governor. It was presented to him on August 31, 2022. Subsection (1) of that legislation purports to amend AB 2571. In contrast, Governor Newsom signed AB 2571 on June 30, 2022, as “urgency” legislation hours after it was presented to him. It seems “urgency” has a fluid definition at the state Capitol.

<sup>2</sup> For continuity, Plaintiffs refer to the challenged law—Business & Professions Code section 22949.80—as AB 2571.

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**ARGUMENT**

**I. AB 2571 VIOLATES PLAINTIFFS’ RIGHTS UNDER THE FIRST AMENDMENT**

**A. Even If AB 160 Takes Effect, AB 2571 Is Still a Content- and Viewpoint-based Restriction on Plaintiffs’ Commercial and Non-commercial Speech**

In the parties’ initial briefing, they argued at length over whether AB 2571 restricted only commercial speech or also banned ideological and educational speech about the use of firearms and related products. Opp’n 7-12; Reply 2-8. As Plaintiffs established, AB 2571 “bars ‘firearm industry members’ from making or distributing any ‘communication’ ‘in exchange for monetary compensation’ if the speech (1) ‘concerns’ a ‘firearm-related product,’ (2) is designed, intended, or could reasonably be considered [to be] ‘attractive to minors,’ and (3) seeks to encourage the audience ... to either purchase or use the product.” Reply 2-3 (quoting Cal. Bus. & Prof. Code § 22949.80(a)(1), (c)(6)). In short, the plain language of AB 2571 as adopted restricts not just speech that proposes the commercial sale of “firearm-related products,” but also a wide swath of pure speech promoting the use of such products. Reply 2-8; Brown Decl., ¶¶ 8-5; Coleman Decl., ¶¶ 4-10; Fink Decl., ¶¶ 9-20; Gomez Decl., ¶¶ 5-11; Gottlieb Decl., ¶¶ 7-13; Minnich Decl., ¶¶ 7-15; Rangel Decl., ¶¶ 3-11; *see also* Suppl. Brown Decl., ¶¶ 2-6; Suppl. Coleman Decl., ¶¶ 2-9; Suppl. Fink Decl., ¶¶ 2-5; Suppl. Gomez Decl., ¶¶ 2-9; Suppl. Gottlieb Decl., ¶¶ 2-5; Suppl. Minnich Decl., ¶¶ 2-7.

With the introduction and adoption of AB 160, which amended AB 2571 in an apparent attempt to narrow the scope of the law, the State is poised to remove its gag on certain enumerated types of firearm-related speech. For instance, it no longer prohibits Plaintiffs CRPA and SAF from engaging in communications promoting junior membership in their organizations. Cal. Bus & Prof. Code § 22949.80(a)(3). And it allows Plaintiffs Brown, CYSSA, RCYCSSL, and CRPA to resume advertisements to youth for their “firearm safety program[s], hunting safety or promotional program[s], firearm instructional course[s], sport shooting event[s] or

1 competition[s]” and other lawful “hunting activit[ies].” *Id.* But make no mistake.  
2 The law remains a content- and viewpoint-based restriction on Plaintiffs’  
3 commercial and non-commercial speech.

4 Indeed, aside from adding subsection (c)(3), which carved out a limited  
5 exemption for some categories of pure speech,<sup>3</sup> AB 160 made just two non-  
6 substantive changes to the original text of AB 2571. The first edit merely swaps the  
7 preposition “concerning” in subsection (a)(1) with the verb phrase “offering or  
8 promoting.” Suppl. Req. Jud. Ntc., Ex. 33 at 11. So the law now reads: “A firearm  
9 industry member shall not advertise, market, or arrange for placement of an  
10 advertising or marketing communication *offering or promoting* any firearm-related  
11 product in a manner that is designed, intended, or reasonably appears to be attractive  
12 to minors.” *Id.* (emphasis added).

13 The second edit removes “service” from the phrase “product or service” in  
14 subsection (c)(6) and deletes “purchase or use the product or service” in favor of  
15 “engage in a commercial transaction.” The subsection now reads:

16 “Marketing or advertising” means, in exchange for monetary  
17 compensation, to make a communication, to one or more  
18 individuals, or to arrange for the dissemination to the public  
19 of a communication, about a *product*, the primary purpose of  
20 which is the encourage the recipients of the communication  
21 to *engage in a commercial transaction*.

22 *Id.*, Ex. 33 at 13 (emphases added).

23 Read together, AB 2571 (as amended by AB 160) will prohibit “firearm  
24 industry members” from making or distributing any “communication” “in exchange  
25 for monetary compensation” if the speech (1) “offers” or “promotes” a “firearm-  
26 related product,” (2) is designed, intended, or could reasonably be considered  
27 “attractive to minors,” and (3) seeks to encourage the audience to “engage in a  
28 commercial transaction.” Cal. Bus. & Prof. Code § 22949.80(a)(1), (c)(6)). For the  
reasons already laid out in Plaintiffs’ moving papers (Mot. 11-12; Reply 10-13), the

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<sup>3</sup> The effect of this exemption on the First Amendment analysis is explained below. Part I.B.1, *infra*.

1 amended law is still a content- and viewpoint-based regulation of speech/press that  
2 targets the messages of particular speakers based on the communication’s “subject  
3 matter” and its “function or purpose.” Indeed, the State’s trivial word swaps do not  
4 change what is really being prohibited—distributing to the public, including both  
5 adults and children, information about firearm-related products that they might wish  
6 to use for lawful hunting and shooting activities.

7 Plaintiffs’ supplemental declarations identify specific (non-exhaustive)  
8 examples of the types of commercial and non-commercial speech that will remain  
9 restricted should AB 160 take effect. Suppl. Brown Decl., ¶¶ 5; Suppl. Coleman  
10 Decl., ¶¶ 6-10; Suppl. Fink Decl., ¶¶ 6-9; Suppl. Gomez Decl., ¶¶ 4, 10; Suppl.  
11 Gottlieb Decl., ¶ 14; Suppl. Minnich Decl., ¶¶ 8, 12, 16, 20-22, 27. For instance,  
12 Plaintiff Junior Sports Magazines will still be barred from publishing and circulating  
13 *Junior Shooters* magazine in California. Suppl. Fink Decl., ¶¶ 6-9. That is because  
14 the amended law expressly prohibits the sorts of advertisements promoting the sale  
15 of lawful firearm-related products found in the pages of *Junior Shooters* magazine.  
16 *Id.*, ¶ 7. To prevent substantial liability under AB 2571, Junior Sports Magazines  
17 must thus remove all such advertisements from *Junior Shooters* magazine (even  
18 though they are both truthful and lawful in the 49 other states where Junior Sports  
19 maintains circulation) or continue to bar distribution of the magazine in California  
20 entirely. *Id.* Of course, advertising makes publication of *Junior Shooters* magazine  
21 economically possible, so ending such advertising is not really an option. *Id.*

22 Plaintiffs Junior Sports Magazines and CRPA will also continue to be barred  
23 from publishing articles and images that endorse firearm-related products designed  
24 for use by minors or come in colors or sizes that might be appealing to minors. *Id.*, ¶  
25 6; Suppl. Minnich Decl., ¶ 12. And they could not publish articles written by youth  
26 shooters endorsing specific firearms or ammunition appropriate for competitive  
27 shooting applications by youth and smaller shooters. Suppl. Fink Decl., ¶ 6; Suppl.  
28 Minnich Decl., ¶ 12.

1 Plaintiffs Brown and CRPA will continue to see restrictions on the speech that  
2 takes place during their firearms training and safety programs and hunter’s  
3 education courses. Suppl. Brown Decl., ¶ 5; Suppl. Minnich Decl., ¶ 8. That is  
4 because the newly amended law exempts only speech “offering” or “promoting”  
5 these courses. Suppl. Req. Jud. Ntc., Ex. 33 at 11. It does not exempt the speech that  
6 takes place at them. *Id.* As a result, Plaintiffs Brown and CRPA must consider  
7 whether it is too risky to resume offering such courses to youth under 18. Suppl.  
8 Brown Decl., ¶ 5; Suppl. Minnich Decl., ¶ 8. And, if they do choose to resume such  
9 offerings, they must carefully censor their speech since such courses inherently  
10 include speech promoting firearm-related products, including recommendations  
11 about specific products. Suppl. Brown Decl., ¶ 5; Suppl. Minnich Decl., ¶ 8  
12 (explaining that California’s own Hunter Safety Course Study Guide—a resource  
13 that every hunter education course in the state must use—incorporates endorsements  
14 for “firearm-related products,” including hunting ammunition, eye- and ear-  
15 protection, adjustable shooting tripods, spotting scopes, and shotgun chokes, among  
16 other things).

17 Similarly, CYSSA’s and RCYCSS’s volunteers and affiliated coaches and  
18 trainers will still be prohibited from endorsing, promoting, or suggesting that their  
19 young athletes obtain firearm-related products necessary for their success in the  
20 shooting sports. Suppl. Coleman Decl., ¶ 8. And they will be barred from endorsing  
21 a specific brand of ammunition or a particular firearm that works best for young and  
22 smaller athletes without violating the law. Suppl. Coleman Decl., ¶ 8.

23 And finally, even with the new exemption for advertising competitive  
24 shooting and hunting programs, AB 2571 still restricts Plaintiffs’ ability to host and  
25 sponsor such activities for youth. Suppl. Gomez Decl., ¶¶ 2-5; Suppl. Minnich Decl.,  
26 ¶¶ 18-21. That is because these events regularly involve signage, flyers, discussions,  
27 branded merchandise, giveaways, and other communications that promote or offer  
28 firearm-related products. Suppl. Minnich Decl., ¶ 20. What’s more, like most large-

1 scale events, the cost of hosting these opportunities for youth generally must be  
2 offset by sponsors, including businesses that sell or manufacture firearms,  
3 ammunition, and related goods. *Id.* Sponsors are offered vendor booth space,  
4 banners, logo placement, or other forms advertising at these events in exchange for  
5 their financial support. *Id.* It is also customary, just like in other sports, to place  
6 sponsor logos on youth competitors’ uniforms and commemorative t-shirts. *Id.*  
7 Because AB 2571 provides no exception for sponsors of youth shooting events or  
8 for the speech that takes place at such events, the law threatens Plaintiffs’ ability to  
9 offer these events for young shooters and effectively silences all the commercial *and*  
10 non-commercial speech that takes place that them. Suppl. Gomez Decl., ¶¶ 2-5;  
11 Suppl. Minnich Decl., ¶¶ 18-21.

12 What’s more, the AB 160 amendments do not address the vagueness and  
13 overbreadth concerns that Plaintiffs identified in their complaint and moving papers.  
14 Comp., ¶¶ 7, 48, 114-15; Mot. 15; Reply 4. In fact, by adding *even more* unclear  
15 language rather than taking it away, AB 160 makes the law in many ways *more*  
16 *vague and more overbroad*. Suppl. Req. Jud. Ntc., Ex. 33 at 11-13 (retaining  
17 overbroad and highly subjective references to communications that are “designed,  
18 intended, or reasonably appear[] to be attractive to minors” and adding vague  
19 references to “any *similar* program, course, or event”). Plaintiffs thus remain unsure  
20 exactly what speech is permissible under the law. So every single time they host an  
21 event open to youth, publish a magazine or bulletin, offer merchandise for sale,  
22 collaborate with industry-member sponsors or advertisers, or communicate with  
23 minors, they must weigh the risks of engaging in this otherwise lawful and truthful  
24 speech against the very real and very substantial risk of civil liability. Suppl. Brown  
25 Decl., ¶¶ 4-5; Suppl. Coleman Decl., ¶ 10; Suppl. Fink Decl., ¶ 9; Suppl. Gomez  
26 Decl., ¶ 10; Suppl. Gottlieb Decl., ¶ 14; Suppl. Minnich Decl., ¶ 27. The very  
27 thought is anathema to the fundamental right to free speech. *Edge v. City of Everett*,  
28 929 F.3d 657, 664-65 (9th Cir. 2019) (requiring “specificity of laws” when “First

1 Amendment freedoms are” implicated because unclear laws might “chill[] protected  
2 speech or expression by discouraging participation”).

3  
4 **B. AB 2571 Cannot Survive Any Level of Judicial Scrutiny Applicable  
to Restrictions on Protected Speech**

5 Because AB 2571 is a content-based and viewpoint-discriminatory restriction  
6 on the non-commercial, pro-gun speech and associational activities described above,  
7 it is presumed invalid and may be upheld only if the government proves it is  
8 “narrowly tailored to serve [a] compelling state interest” under strict scrutiny. *Reed*  
9 *v. Town of Gilbert*, 576 U.S. 155, 163 (2015). For the reasons set forth in Plaintiffs’  
10 moving papers, the State cannot meet its burden under that exacting test and, in fact,  
11 did not even attempt to do so. Mot. 13-15; Reply 13. The Court should thus hold that  
12 Plaintiffs’ are likely to succeed on the merits of their First Amendment claims.

13 But even if the Court finds that the AB 160 amendments effectively limit the  
14 law’s reach to only speech proposing the commercial sale of firearm-related  
15 products, the result is the same. Mot. 15-21; Reply 13-20. By now, it is beyond  
16 dispute that AB 2571, both as adopted and as recently amended, bans truthful  
17 commercial speech about lawful conduct. Mot. 16-17; Reply 14-15; Req. Jud. Ntc.,  
18 Ex 33 at 11-12; *see also* Part I.B., *infra*. The State cannot meet its burden to prove  
19 that the law withstands constitutional scrutiny—even under the slightly more  
20 forgiving commercial speech test of *Central Hudson*. The AB 160 amendments  
21 themselves made this fact all the more clear.

22 **1. Subsection (c)(3), AB 160’s exemption for speech promoting**  
23 **certain lawful activities, confirms that AB 2571 restricts**  
**nonmisleading commercial speech about lawful activities.**

24 Even under the State’s own dubious theory that advertising “firearm-related  
25 products” to minors should become a whole new category of prohibited speech, the  
26 State’s new “exemption” for communications promoting certain lawful activities  
27 swallows the rule. The new exemption reads:

28 This subdivision does not apply to a communication offering  
or promoting any firearm safety program, hunting safety or

1 promotional program, firearm instructional course, sport  
2 shooting event or competition, or any similar program,  
3 course, or event, nor does it apply to a communication  
4 offering or promoting membership in any organization, or  
5 promotion of lawful hunting activity, including, but not  
6 limited to, any fundraising event, youth hunting program, or  
7 outdoor camp.

8 Req. Jud. Ntc., Ex. 33 at 11-12 (amended § 22949.80 (a)(3)).

9 This is such a strongly implied admission that it borders on a judicial  
10 admission that minors may lawfully possess and shoot firearms in California.  
11 Indeed, under this new subsection, “firearm industry members” are expressly  
12 allowed to market firearm safety programs, hunting safety courses, firearm  
13 instructional courses, and sport shooting events and competitions to minors—  
14 presumably so that minors may participate in such activities. *Id.* They may also  
15 market “lawful hunting activit[ies], including, but not limited to, any fundraising  
16 event, *youth* hunting program, or outdoor camp” where minors are highly likely to  
17 handle and use firearms, ammunition, and related products. *Id.* (emphasis added).

18 In short, the amended law acknowledges on its face that, even if they must do  
19 so under adult supervision or with parental consent, minors may legally handle and  
20 shoot firearms in California. *Id.*; *see also* Cal. Penal Code §§ 29615(a)-(d), 29655;  
21 Barvir Decl., Ex. 32 (Department of Fish & Wildlife form seeking parental consent  
22 for minor to “handle, manipulate, and/or use firearms” during the state hunter’s  
23 safety course). Having vigorously resisted this fairly obvious point in its opposition,  
24 Opp’n 14-15, it was nice of the State to finally concede the point.

25 **2. AB 2571 does not directly or materially advance the State’s**  
26 **purported public safety interest**

27 The State’s concession, however, raises a question: Is the State of California  
28 seriously suggesting that minors may lawfully engage in activities that require the  
use of firearm-related products, but that they (and their consenting parents) can be  
forbidden access to truthful market information about those products before taking  
part in such activities? The “logic” rivals the White Queen’s edict:

“You couldn’t have it if you did want it,” the Queen said.



1 “The rule is, jam tomorrow and jam yesterday – but never  
jam today.”

2 “It must come sometimes to ‘jam today,’” Alice objected.

3 “No, it can’t,” said the Queen. “It’s jam every other day:  
4 today isn’t any other day, you know.”

5 Lewis Carroll, *Through the Looking-Glass and What Alice Found There*. It’s  
6 nonsensical. But more important than that, it illustrates the constitutional vice of AB  
7 2571. That is, the law acknowledges that minors can lawfully enjoy the shooting  
8 sports in California, but it punishes those who seek to provide minors with truthful  
9 information about the firearm-related products necessary to participate in those  
10 lawful activities. This is irrational on its face. And it establishes why AB 2571  
11 neither directly nor materially advances the State’s purported public safety interests.

12 Rather than *directly* attack the perceived problem of *illegal* possession and  
13 use of firearms by minors, AB 2571 approaches the issue exactly backwards. It  
14 seeks to *indirectly* dampen the demand for even *legal* possession of firearm-related  
15 products through advertising restrictions aimed at both minors and adults. But it  
16 does so while simultaneously authorizing speech encouraging minors to participate  
17 in activities where they will, in fact, be using firearms and related products. Req.  
18 Jud. Nt., Ex. 33 at 11-12. The law is thus clearly not concerned with minors gaining  
19 access to actual firearms—just the speech that might entice them to do so. Whatever  
20 the constitutional contours of regulations on minors’ access to actual firearms should  
21 be (a question not at issue), California’s policy of restricting a minor’s access to  
22 *information* about firearm-related products, when California openly admits that  
23 minors may lawfully use those products, makes the government seem almost  
24 schizophrenic.

25 Again, AB 2571 is, at best, an impermissible restriction on speech that only  
26 indirectly serves the State’s public safety interest. *Sorrell v. IMS Health Inc.*, 564  
27 U.S. 552, 554-55 (2011) (holding that the state may not “achieve its policy  
28 objectives through the indirect means of restraining certain speech by certain

1 speakers”). Even though the Supreme Court and the Ninth Circuit have sometimes  
2 tolerated indirect advertising restrictions to dampen market demand, *see United*  
3 *States v. Edge Broad. Co.*, 509 U.S. 418, 434 (1993), “when a State entirely  
4 prohibits dissemination of truthful, nonmisleading commercial messages for reasons  
5 unrelated to the preservation of a fair bargaining process, there is far less reason to  
6 depart from the rigorous review that the First Amendment generally demands.” 44  
7 *Liquormart v. Rhode Island*, 517 U.S. 484, 501 (1996). Indeed, the State “may not  
8 seek to remove a popular but disfavored product from the marketplace by  
9 prohibiting truthful, nonmisleading advertisements. ...” *Sorrell*, 564 U.S. at 577-78.  
10 This can hardly be truer than when what the government seeks to banish from the  
11 marketplace are *constitutionally protected* products.

12       Indeed, in *Carey v. Population Services Int’l*, 431 U.S. 678 (1977), the  
13 Supreme Court struck down a state law that prohibited the advertisement of  
14 contraceptives to everyone and prohibited both the advertisement and the sale of  
15 such products to minors. The *Carey* Court reiterated that the government may not  
16 “completely suppress the dissemination of concededly truthful information about  
17 entirely lawful activity,” even when that information could be categorized as  
18 “commercial speech.” *Id.* at 700 (quoting *Va. Pharm. Bd. v. Va. Citzs. Consumer*  
19 *Council*, 425 U.S. 748, 773 (1976)). That an expression “may be offensive to some  
20 does not justify its suppression.” *Id.* at 701 (internal quotation omitted). And “[a]s  
21 for the possible ‘legitimation’ of illicit ... behavior”:

22             [W]hatever might be the case if the advertisements directly  
23 incited illicit ... activity among the young, none of the  
24 advertisements in this record can even remotely be  
25 characterized as ‘directed to inciting or producing imminent  
26 lawless action and... likely to incite or produce such action.’  
27 *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). **They**  
28 **merely state the availability of products and services that**  
**are not only entirely legal, cf. *Pittsburgh Press Co. v.***  
***Human Relations Comm’n*, 413 U.S. 376 (1973), but**  
**constitutionally protected.”**

*Id.* 701-02 (emphasis added).

1 With AB 2571’s newly adopted exemption for communications promoting or  
2 offering certain firearm-related programs, California now acknowledges that minors  
3 may lawfully participate in shooting and hunting activities though with parental  
4 authorization—and that such behavior is, dare we say, normal conduct. If shooting  
5 and hunting by minors is itself lawful conduct, it would seem that California has  
6 flitted away whatever meager justification it might have had to forbid the  
7 dissemination and receipt of communications advertising the availability of lawful  
8 firearm-related products necessary for minors to engage in those activities. In short,  
9 the law does not directly or materially advance any substantial state interest.

10  
11 **3. AB 2571 is far more extensive than necessary to promote the State’s purported public safety interests.**

12 The last prong of the *Central Hudson* test requires the State to show that the  
13 challenged law “is no more extensive than necessary to further” the government’s  
14 purported interests. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447  
15 U.S. 557, 569-70 (1980). “A statute is more extensive than necessary if the  
16 government has other options that could advance its asserted interest in a manner  
17 less intrusive on First Amendment rights.” *Tracy Rifle & Pistol LLC v. Harris*, 339  
18 F. Supp. 3d 1007, 1018 (E.D. Cal. 2018) (citing *Rubin v. Coors Brewing Co.*, 514  
19 U.S. 476, 491 (1995)). “In other words, ‘it should not be overinclusive.’” *Id.*  
20 (quoting *Valle Del Sol v. Whiting*, 709 F.3d 808, 825 (9th Cir. 2013)). As established  
21 in Plaintiffs’ moving papers and on reply, AB 2571 is more extensive than necessary  
22 to achieve the State’s interests because it impermissibly burdens speech about not  
23 only the illegal purchase of firearms by minors, but also the lawful use of “firearm-  
24 related products” by minors and the lawful purchase and use of such products by  
25 adults. It is also more extensive than necessary because the State has several tools  
26 available to combat the problem of illegal firearm use by minors that would not  
27 restrict speech at all. Mot. 19-21; Reply 17-20.

28 Indeed, California law already criminalizes the sale of firearms to any person

1 under 21, which would also include any attempt, with an overt act, to sell a firearm  
2 to a minor. Cal. Penal Code § 27510; *see also id.* § 664 (attempt). State law also  
3 mandates locked-storage to prevent the unsupervised and unauthorized access of  
4 firearms by minors. Cal. Penal Code § 25100. Further, “to deter [gun] crime, the  
5 [g]overnment has an arsenal of criminal laws it may enforce.” *Tracy Rifle & Pistol*  
6 *LLC v. Harris*, 339 F. Supp. 3d 1007, 1013 (E.D. Cal. 2018). “[T]he [g]overnment  
7 could further its asserted interests simply by enforcing these laws.” *Id.* They attack  
8 the problem directly and without restricting any speech at all. Because the  
9 government can “achieve its interests in a manner that does not restrict speech,” it  
10 “must do so.” *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 371 (2002). If the  
11 State feels these safeguards have proven insufficient, “it may pass additional *direct*  
12 regulations within constitutionally permissible boundaries.” *Tracy Rifle*, 339 F.  
13 Supp. 3d at 1018-19 (emphasis added). It could even mount its own speech  
14 campaign decrying the perils of minor firearm use.<sup>4</sup> But it may *not* strip away First  
15 Amendment freedoms through overinclusive speech restrictions in service of even a  
16 substantial interest in protecting children from perceived harm. *See Carey*, 431 U.S.  
17 at 700-02; *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 581 (2001).

18 The Supreme Court’s reasoning in *Lorillard* is particularly instructive. There,  
19 the Supreme Court accepted as uncontroversial that Massachusetts had an interest in  
20 preventing minors’ access to tobacco products and noted that state law had already  
21 made it illegal to sell or distribute tobacco products to them. *Id.* at 552. Even still,  
22 holding that “the governmental interest in protecting children from harmful  
23 materials does not justify an unnecessarily broad suppression of speech addressed to  
24 adults,” the Court struck Massachusetts’ restrictions on tobacco marketing likely to  
25 be observed by children. *Id.* at 581.

26 Like Massachusetts’ ban on tobacco marketing addressed to adults that might

27 <sup>4</sup> Indeed, “[t]he Supreme Court has recognized that ‘educational campaign  
28 focuses on the problems [at issue] might prove to be more effective’ than advertising  
regulations designed to decreased demand of a product.” *Tracy Rifle*, 339 F. Supp.  
3d at 1019 (quoting *44 Liquormart*, 517 U.S. at 506 (plurality opinion)).

1 also be consumed by children, California’s AB 2571 restricts not only speech that  
2 directly targets children, but also speech directed to adults that “appears to be  
3 attractive to minors” under California’s subjective criteria, Cal. Bus. & Prof. Code §  
4 22949.80(a)(1). Unlike the prohibition on minor tobacco use imposed by  
5 Massachusetts and countenanced by the *Lorillard* Court, however, California’s AB  
6 2571 implicitly endorses—by expressly authorizing speech about—lawful minor  
7 firearm use. It stands to reason then that California’s ban on firearm-related speech  
8 stands on even shakier ground than Massachusetts’ unconstitutional ban on tobacco-  
9 related speech. For it can hardly be argued with a straight face that children must be  
10 shielded from all mention of the availability of a market of firearm-related products,  
11 while acknowledging with the same breath that they may lawfully participate in  
12 shooting and hunting activities where they will handle and use actual firearms.

13 That said, even if California had condemned minors engaging in the shooting  
14 sports, AB 2571 would still be unconstitutional under the analysis set forth in  
15 *Lorillard*. Even if minors could constitutionally be denied all manner of firearm use  
16 and possession, the government goes a bridge too far when it broadly suppresses  
17 truthful speech by and for adults about lawful and, in fact, constitutionally protected  
18 products. *See Carey*, 431 U.S. at 700-02; *Lorillard*, 533 U.S. at 581.

19 The other AB 160 amendments fail to clear up this fatal overbreadth. To the  
20 contrary, the trivial word swaps achieved by AB 160 in subsections (a)(1) and  
21 (c)(6), especially when read along with the new exemptions found at subsection  
22 (a)(3), are without effect vis-à-vis AB 2571’s sins against the First Amendment. The  
23 law is still overbroad because it targets speech directed at adults if it might  
24 reasonably be said to be attractive to minors, and because it penalizes speech to both  
25 adults and minors, even the products are lawful for minors to use. This California  
26 may not do. *See Carey*, 431 U.S. at 700-02; *Lorillard*, 533 U.S. at 581.

27 Finally, in *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786 (2011), the  
28 Supreme Court took up the issue of violent video games marketed, sold, and rented

1 to minors. The challenged law covered games “in which the range of options  
2 available to a player include[d] killing, maiming, dismembering, or sexually  
3 assaulting an image of a human being,” *Id.* at 789. Citing well-established law, the  
4 Court declined California’s gambit to create a new category of unprotected speech  
5 directed at shielding minors and struck the violent video game restriction.

6 The *Brown* Court observed that “as a general matter, . . . government has no  
7 power to restrict expression because of its message, its ideas, its subject matter, or  
8 its content.” *Id.* at 790 (quoting *Ashcroft v. Am. Civ. Libs. Union*, 535 U.S. 564, 573,  
9 (2002) (internal quotations omitted)). While there are “well-defined and narrowly  
10 limited classes of speech,” like obscenity, incitement, and fighting words, that may  
11 be restricted without constitutional offense, *id.* at 790-91 (quoting *Chaplinsky v.*  
12 *New Hampshire*, 315 U.S. 568, 571-72 (1942)), the Court declined to broaden that  
13 list to include content-based restrictions designed to protect minors from harm, *id.* at  
14 794-95. To the contrary, the Court held, “[s]peech that is neither obscene as to  
15 youths nor subject to some other legitimate proscription cannot be suppressed solely  
16 to protect the young from ideas or images that a legislative body thinks unsuitable  
17 for them.” *Id.* (quoting *Erznoznik v. Jacksonville*, 4322 U.S. 205, 213-214 (1975))  
18 (internal quotations omitted).

19 What’s more, the Supreme Court recently held, in *New York State Rifle &*  
20 *Pistol Ass’n v. Bruen*, \_\_\_ U.S. \_\_\_, 142 S. Ct. 2111 (2022), that the appropriate  
21 analysis for Second Amendment challenges requires that “[t]he government . . .  
22 justify its regulation by demonstrating that it is consistent with the Nation’s  
23 historical tradition of firearm regulation.” *Id.* at 2129-30. California’s firearm-  
24 speech restriction, codified by AB 2571, is thus subject to the same mode of analysis  
25 as both *Bruen* and *Brown*, which also held that there is no longstanding tradition in  
26 this country of specially restricting children’s access to information on the pretext  
27 that it exposes them to violence, *Brown*, 564 U.S. at 795-96.

28 And if a California law restricting marketing to minors of immersive, violent

1 video games—in which high scores are measured by body counts at the end of  
2 play—cannot withstand the acid test of the First Amendment, then how can  
3 California justify censorship of any kind in the marketing of firearm-related  
4 products to minors, when the state admits that minors may lawfully engage in  
5 activities that require the use of firearms? Simply put, it cannot. And this Court  
6 should enjoin enforcement of AB 2571.

7 **II. AB 2571 ALSO VIOLATES PLAINTIFFS’ RIGHT TO EQUAL PROTECTION**

8 Because AB 2571 is *still* a content-based and viewpoint-discriminatory  
9 speech restriction, it *still* treats some speech and, necessarily, some speakers  
10 differently from others. It thus violates not just the First Amendment rights of  
11 speech, association, and press, it also violates the Equal Protection Clause of the  
12 Fourteenth Amendment. *Dariano v. Morgan Hill Unif. Sch. Dist.*, 767 F.3d 764,  
13 779-780 (9th Cir. 2014).

14 As explained in Plaintiffs’ moving papers, the Equal Protection analysis is  
15 “essentially the same” as the First Amendment analysis. Mot. 20 (quoting *id.* at 780;  
16 *Police Dep’t of Chic. v. Mosley*, 408 U.S. 92, 101 (1972) (“The Equal Protection  
17 Clause requires that statutes affecting First Amendment interests be narrowly  
18 tailored to their legitimate objectives.”). Plaintiffs thus incorporate the First  
19 Amendment arguments of their moving papers and this supplemental brief. Mot. 22-  
20 23; Reply 20-21; Part I, *supra*. If the Court finds that Plaintiffs are likely to succeed  
21 on their claim that AB 2571 is an impermissible restriction on their First  
22 Amendment rights, it should similarly hold that AB 2571 violates their right to equal  
23 protection under the law.

24 **III. THE OTHER PRELIMINARY INJUNCTION FACTORS FAVOR RELIEF**

25 Because, as Plaintiffs have established, Plaintiffs are likely to succeed on the  
26 merits of their constitutional claims and the recently adopted amendments to AB  
27 2571 did not change that conclusion, the remaining preliminary injunction factors—  
28

1 i.e., irreparable harm, balance of the equities, and the public interest—readily  
2 follow. Mot. 23-25; Reply 21-23. Preliminary relief is warranted.

3 **CONCLUSION**

4 For the reasons laid out in this court-ordered supplemental brief, as well as in  
5 Plaintiffs’ moving papers and reply, the Court should grant Plaintiffs’ Motion for  
6 Preliminary Injunction and enjoin the enforcement of section 22949.80 while this  
7 case proceeds to a final decision on the merits.

8  
9 Dated: September 28, 2022

**MICHEL & ASSOCIATES, P.C.**

10 *s/ Anna M. Barvir*

11 Anna M. Barvir  
12 Counsel for Plaintiffs Junior Sports Magazines,  
13 Inc., Raymond Brown, California Youth  
14 Shooting Sports Association, Inc., Redlands  
California Youth Clay Shooting Sports, Inc.,  
California Rifle & Pistol Association,  
Incorporated, The CRPA Foundation, and Gun  
Owners of California, Inc.

15 Dated: September 28, 2022

**LAW OFFICES OF DONALD KILMER, APC**

16 *s/ Donald Kilmer*

17 Donald Kilmer  
18 Counsel for Plaintiff Second Amendment  
Foundation

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**CERTIFICATE OF SERVICE**  
IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Junior Sports Magazines, Inc., et al. v. Bonta*  
Case No.: 2:22-cv-04663-CAS (JCx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**PLAINTIFFS’ SUPPLEMENTAL BRIEF IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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[kevin.kelly@doj.ca.gov](mailto:kevin.kelly@doj.ca.gov)  
300 South Spring Street, Suite 9012  
Los Angeles, CA 90013  
*Attorney for Defendant*

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 28, 2022.

  
\_\_\_\_\_  
Laura Palmerin

1 C.D. Michel-SBN 144258  
Anna M. Barvir-SBN 268728  
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MICHEL & ASSOCIATES, P.C.  
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7 Sports, Inc., California Rifle & Pistol Association, Incorporated, The CRPA  
Foundation, and Gun Owners of California, Inc.  
8

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12 Attorney for Plaintiff Second Amendment Foundation

13 IN THE UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 JUNIOR SPORTS MAGAZINES  
INC., RAYMOND BROWN,  
16 CALIFORNIA YOUTH SHOOTING  
SPORTS ASSOCIATION, INC.,  
17 REDLANDS CALIFORNIA  
YOUTH CLAY SHOOTING  
18 SPORTS, INC., CALIFORNIA  
RIFLE & PISTOL ASSOCIATION,  
19 INCORPORATED, THE CRPA  
FOUNDATION, AND GUN  
20 OWNERS OF CALIFORNIA, INC.;  
and SECOND AMENDMENT  
21 FOUNDATION,

CASE NO: 2:22-cv-04663-CAS (JCx)

**PLAINTIFFS' SUR-REPLY IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

22 Plaintiffs,

23 v.

24 ROB BONTA, in his official capacity  
as Attorney General of the State of  
25 California; and DOES 1-10,

26 Defendant.  
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**PLAINTIFFS’ SUR-REPLY BRIEF**

Whether the State’s gambit to amend AB 2571 was instigated after this lawsuit was filed on July 8, 2022, or prior to that filing, these inchoate amendments to this law seem to address some aspects of the law’s overbroad, vague, and ambiguous language; deficiencies that plaintiffs noted in their pleadings and moving papers. This suggests that the State’s proposal to amend AB 2571 is being made in response to this lawsuit. After exchanging emails with opposing counsel and having had a discussion among the Plaintiffs regarding this new development, Plaintiffs could not (and did not) stipulate to any continuance of the August 22, 2022, hearing for at least four reasons.

First, this Court could just treat this email from the defendants’ counsel and its attachment (sent to plaintiffs after we filed our reply brief) as an admission by a party opponent under Fed. R. Evid. 801(d)(2) and draw the logical inference that the defendants acknowledge that AB 2571, in its current form, is fatally overbroad and thus is likely unconstitutional.

The spin of opposing counsel’s email—that (somehow) AB 2571 is just fine as it is and that these amendments make no substantive changes—should be seen for what it is: The government trying to have its cake and eat it too. AB 2571 must be analyzed by this Court as it was written and signed into law, at the time this lawsuit was filed, and as the text has been in effect until the time this Court has set for hearing. These “changes” to the law are not effective now, may never be effective, and should not impact the Court’s analysis, except to the extent they evidence the State’s recognition that the law is unconstitutional. If the potential amendments are truly non-substantive and have nothing to do with this lawsuit, then why the request for a postponement of the hearing on the injunction request? Contra wise, if AB 2571 is flawed and requires amendment, then plaintiffs’ motion for a preliminary injunction should be granted—in part—based on the implied recognition by the defendants that the current law is overbroad.

1 Second, this rumor of a potential but by no means certain “fix-it” bill, whether  
2 it is expressly intended to address the constitutional deficiencies of AB 2571, or as  
3 opposing counsel offers, is only intended to create additional exceptions to the  
4 legislative policy—the plain facts are that the proposed amendments will make this  
5 a more narrowly tailored law. That itself is a concession that the law as it exists  
6 today is overbroad.

7 This does not warrant any delay in addressing the ongoing irreparable harms  
8 that Plaintiffs (and countless others similarly situated) have been suffering under this  
9 ill-conceived law for the greater part of a month. This Court may recall that it denied  
10 Plaintiffs’ request for an expedited hearing, and that the current hearing set for  
11 August 22, 2022, is already a postponement of adjudicating the fundamental rights  
12 at stake in this matter. The Court may also recall, these harms were invited upon  
13 Plaintiffs because the State chose to pass AB 2571 as an urgency measure, taking  
14 effect immediately upon adoption. Mem. Supp. Ex Parte Mot. for Order Shortening  
15 Time (ECF No. 13-1). As Plaintiffs have explained, this kept Plaintiffs from  
16 availing themselves of the normal procedures for seeking preliminary relief before  
17 the law would take effect. *Id.* at 6. And it prevented the State itself from introducing  
18 its proposed amendments to address the concerns Plaintiffs’ lawsuit raised before  
19 the law would have taken effect on January 1, 2023, *if it had not been passed as an*  
20 *urgency measure*, thus stripping tens or hundreds of thousands of people of their free  
21 speech rights immediately upon the law taking effect on June 30, 2022.

22 Third, even if the proposed amendments are introduced, the defendants’  
23 lawyers did not (because they cannot) give any assurance that the Legislature will  
24 actually pass the proposed bill, what the final language of the bill will be, or whether  
25 the Governor will even sign the bill into law once it gets to his desk. Plaintiffs  
26 should not be expected to spend time and their limited resources to address any legal  
27 issues raised by a phantom bill, nor should plaintiffs be forced to live with their  
28 rights restricted while the State goes through its legislative process. Unless and until

1 this language is introduced as a bill, let alone signed into law, and takes effect, it is  
2 inappropriate to rely on pie-in-the-sky possibilities to continue to delay the  
3 preliminary relief that Plaintiffs are patently entitled to.

4 Fourth, and perhaps most importantly, even the rumored amendments do not  
5 cure the constitutional deficiencies of this law. The new law, if ever passed, and  
6 depending on its actual language, still unconstitutionally censors both pure speech  
7 and commercial speech because<sup>1</sup>: (1) it is still both a content based and viewpoint  
8 based regulation of speech, (2) it is still overbroad, vague, and ambiguous, (3) the  
9 law is not narrowly tailored or substantially related<sup>2</sup> to the public safety policy it  
10 purports to address, and (4) it is still an animus based law discriminating against  
11 people exercising a fundamental right that violates the 14th Amendment's Equal  
12 Protection Clause. Those issues are best addressed by this Court when and if that  
13 time ever comes.

14 Finally, this development undermines the State's opposition brief and  
15 supporting material. If the current language of AB 2571 requires amendment to  
16 appease certain interest groups or to cure (some of) its constitutional defects, then  
17 the State should have filed a non-opposition to Plaintiffs' request for a preliminary  
18 injunction (or stipulated to its entry) and then filed notice of the (rumored)  
19 impending change to the law in their answer. But the defendants didn't do that. If  
20 they had, the lawsuit could then have been stayed after entry of the injunction,  
21 pending any changes in the law that actually comply with the Constitution. That way  
22 the status quo could be maintained as to the Plaintiffs' rights while the California  
23

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24 <sup>1</sup> See Pls.' Mem. Supp. Mot. Prelim. Inj. (ECF No. 12-1) and Pls.' Reply to  
25 Opp'n to Pls' Mot. Prelim. Inj. (ECF No. 21).

26 <sup>2</sup> E.g., If this bill merely defined firearm marketing to minors, and rather than  
27 banned that speech outright, required a warning label directing viewers and readers  
28 of any marketing material to California's law restricting firearms sales to adults, and  
penalizing possession and sales to minors without parental consent, the law might be  
less offensive to the First Amendment.

1 Legislature and Governor take their time to try and salvage its intrinsically  
2 unconstitutional policy of censoring free speech.

3 Plaintiffs have preemptively filed this supplemental brief based on this  
4 development: (1) because it is new information unavailable to the plaintiffs when  
5 they filed their reply brief that materially advances Plaintiffs' existing arguments in  
6 favor of granting the preliminary injunction, and (2) to give the Court as much  
7 notice as possible that this new development will be dropped in its lap on or before  
8 next Monday.

9 Plaintiffs respectfully ask the Court to:

- 10 1. Enter an Order preliminarily enjoining the enforcement of AB 2571  
11 effective immediately upon filing of the Order;
- 12 2. Stay further litigation in this matter until the State files a notice with the  
13 Court that AB 2571 has in fact been amended and those amendments  
14 have taken effect or, alternatively, that the proposed amendments have  
15 been rejected by either the Legislature or the Governor, at which point  
16 the burden would shift to the State to file a motion to modify or vacate  
17 the injunction under Rule 65 of the Federal Rules of Civil Procedure.

19 Dated: August 19, 2022

**MICHEL & ASSOCIATES, P.C.**

*s/ Anna M. Barvir*

Anna M. Barvir  
Counsel for Plaintiffs Junior Sports Magazines,  
Inc., Raymond Brown, California Youth  
Shooting Sports Association, Inc., Redlands  
California Youth Clay Shooting Sports, Inc.,  
California Rifle & Pistol Association,  
Incorporated, The CRPA Foundation, and Gun  
Owners of California, Inc.

26 Dated: August 19, 2022

**LAW OFFICES OF DONALD KILMER, APC**

*s/ Donald Kilmer*

Donald Kilmer  
Counsel for Plaintiff Second Amendment  
Foundation

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**CERTIFICATE OF SERVICE**  
IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Junior Sports Magazines, Inc., et al. v. Bonta*  
Case No.: 2:22-cv-04663-CAS (JCx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**PLAINTIFFS' SUR-REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Kevin J. Kelly, Deputy Attorney General  
[kevin.kelly@doj.ca.gov](mailto:kevin.kelly@doj.ca.gov)  
300 South Spring Street, Suite 9012  
Los Angeles, CA 90013  
*Attorney for Defendant*

I declare under penalty of perjury that the foregoing is true and correct.

Executed August 19, 2022.

  
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Laura Palmerin

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IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUNIOR SPORTS MAGAZINES  
INC., RAYMOND BROWN,  
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REDLANDS CALIFORNIA  
YOUTH CLAY SHOOTING  
SPORTS, INC., CALIFORNIA  
RIFLE & PISTOL ASSOCIATION,  
INCORPORATED, THE CRPA  
FOUNDATION, AND GUN  
OWNERS OF CALIFORNIA, INC.;  
and SECOND AMENDMENT  
FOUNDATION,

Plaintiffs,

v.

ROB BONTA, in his official capacity  
as Attorney General of the State of  
California; and DOES 1-10,

Defendant.

CASE NO: 2:22-cv-04663-CAS (JCx)

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing Date: August 22, 2022  
Hearing Time: 10:00 a.m.  
Courtroom: 8D  
Judge: Christina A. Snyder

The motion of Plaintiffs Junior Sports Magazines Inc., Raymond Brown, California Youth Shooting Sports Association, Inc., Redlands California Youth Clay Shooting Sports, Inc., California Rifle & Pistol Association, Incorporated, The CRPA Foundation, Gun Owners of California, Inc., and Second Amendment Foundation came on regularly for hearing on August 22, 2022. Anna M. Barvir



1 appeared on behalf of Plaintiffs. Kevin J. Kelly appeared on behalf of the Attorney  
2 General. On proof made to the satisfaction of the court, and good cause appearing:

3 IT IS ORDERED that during the pendency of this action, the named  
4 Defendant, his employees, agents, successors in office, and all District Attorneys,  
5 County Counsel, and City Attorneys holding office in the state of California, as  
6 well as their successors in office, are enjoined and restrained from engaging in,  
7 committing, or performing, directly or indirectly, by any means whatsoever, any  
8 enforcement of AB 2571, codified at Business & Professions Code section  
9 22949.80;

10 The court reserves jurisdiction to modify this injunction as the ends of justice  
11 may require.

12 IT IS SO ORDERED.

13  
14 Dated: \_\_\_\_\_

\_\_\_\_\_   
Honorable Christina A. Snyder  
United States District Court Judge

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11 Youth Shooting Sports Association, Inc., Redlands California Youth Clay Shooting  
12 Sports, Inc., California Rifle & Pistol Association, Incorporated, The CRPA  
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21  
22 IN THE UNITED STATES DISTRICT COURT  
23  
24 CENTRAL DISTRICT OF CALIFORNIA

25 JUNIOR SPORTS MAGAZINES  
26 INC., RAYMOND BROWN,  
27 CALIFORNIA YOUTH SHOOTING  
28 SPORTS ASSOCIATION, INC.,  
REDLANDS CALIFORNIA  
YOUTH CLAY SHOOTING  
SPORTS, INC., CALIFORNIA  
RIFLE & PISTOL ASSOCIATION,  
INCORPORATED, THE CRPA  
FOUNDATION, AND GUN  
OWNERS OF CALIFORNIA, INC.;

CASE NO: 2:22-cv-04663-CAS (JCx)

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

Hearing Date: August 22, 2022  
Hearing Time: 10:00 a.m.  
Courtroom: 8D  
Judge: Christina A. Snyder

and SECOND AMENDMENT  
FOUNDATION,  
21  
22 Plaintiffs,

23 v.

24 ROB BONTA, in his official capacity  
25 as Attorney General of the State of  
26 California; and DOES 1-10,

27 Defendant.  
28

1 TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Under Federal Rule of Evidence 201, Plaintiffs Junior Sports Magazines Inc.,  
3 Raymond Brown, California Youth Shooting Sports Association, Inc., Redlands  
4 California Youth Clay Shooting Sports, Inc., California Rifle & Pistol Association,  
5 Incorporated, The CRPA Foundation, Gun Owners of California, Inc., and Second  
6 Amendment Foundation (collectively, “Plaintiffs”) respectfully request that the  
7 Court take judicial notice of the following documents in support of Plaintiffs’  
8 motion for preliminary injunction:

9 1. **Assembly Bill 2571, 2021-2022 Reg. Sess. (Cal. 2022).** A true and  
10 correct copy of this document is attached as **Exhibit 1**. Exhibit 1 is a public record  
11 of the California State Legislature that I accessed on or about July 6, 2022, from  
12 <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official  
13 California Legislative Information website, which publishes official legal history  
14 and government documents saved in a fully searchable, image-based format.

15 2. **Assembly Privacy & Consumer Prot. Comm., Bill Analysis Re: AB**  
16 **2571 (Bauer-Kahan) – As Amended April 7, 2022, 2021-2022 Reg. Sess. (Cal.**  
17 **2022).** A true and correct copy of this document is attached as **Exhibit 2**. Exhibit 2  
18 is a public record of the California State Legislature that I accessed on or about July  
19 6, 2022, from <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the  
20 official California Legislative Information website, which publishes official legal  
21 history and government documents saved in a fully searchable, image-based format.

22 3. **Assembly Judiciary Comm., Bill Analysis Re: AB 2571 (Bauer-**  
23 **Kahan) – As Amended April 7, 2022, 2021-2022 Reg. Sess. (Cal. 2022).** A true  
24 and correct copy of this document is attached as **Exhibit 3**. Exhibit 3 is a public  
25 record of the California State Legislature that I accessed on or about July 6, 2022,  
26 from [https://leginfo.legislature.ca.gov/faces/billSearchClient. xhtml](https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml)., the official  
27 California Legislative Information website, which publishes official legal history  
28 and government documents saved in a fully searchable, image-based format.

1           4.     **Assembly Appropriations Comm., Bill Analysis Re: AB 2571**  
2     **(Bauer-Kahan) – As Amended April 27, 2022, 2021-2022 Reg. Sess. (Cal.**  
3     **2022).** A true and correct copy of this document is attached as **Exhibit 4.** Exhibit 4  
4     is a public record of the California State Legislature that I accessed on or about July  
5     6, 2022, from <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the  
6     official California Legislative Information website, which publishes official legal  
7     history and government documents saved in a fully searchable, image-based format.

8           5.     **Assembly, Assembly Floor Analysis Re: AB 2571 (Bauer-Kahan**  
9     **and Gipson) – As Amended April 27, 2022, 2021-2022 Reg. Sess. (Cal. 2022).** A  
10    true and correct copy of this document is attached as **Exhibit 5.** Exhibit 5 is a  
11    public record of the California State Legislature that I accessed on or about July 6,  
12    2022, from <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the  
13    official California Legislative Information website, which publishes official legal  
14    history and government documents saved in a fully searchable, image-based format.

15          6.     **Senate Judiciary Comm., Bill Analysis Re: AB 2571 (Bauer-**  
16    **Kahan), 2021-2022 Reg. Sess. (Cal. 2022).** A true and correct copy of this  
17    document is attached as **Exhibit 6.** Exhibit 6 is a public record of the California  
18    State Legislature that I accessed on or about July 6, 2022, from  
19    <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official  
20    California Legislative Information website, which publishes official legal history  
21    and government documents saved in a fully searchable, image-based format.

22          7.     **Senate Appropriations Comm. Bill Analysis Re: AB 2571 (Bauer-**  
23    **Kahan), 2021-2022 Reg. Sess. (Cal. 2022).** A true and correct copy of this  
24    document is attached as **Exhibit 7.** Exhibit 7 is a public record of the California  
25    State Legislature that I accessed on or about July 6, 2022, from  
26    <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official  
27    California Legislative Information website, which publishes official legal history  
28    and government documents saved in a fully searchable, image-based format.

1           8.     **Senate Rules Comm., Senate Floor Analysis Re: AB 2571 (Bauer-**  
2     **Kahan and Gipson), 2021-2022 Reg. Sess. (Cal. 2022).** A true and correct copy of  
3     this document is attached as **Exhibit 8**. Exhibit 8 is a public record of the California  
4     State Legislature that I accessed on or about July 6, 2022, from  
5     <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official  
6     California Legislative Information website, which publishes official legal history  
7     and government documents saved in a fully searchable, image-based format.

8           9.     **Assembly, Concurrence in Senate Amendments Re: AB 2571**  
9     **(Bauer-Kahan and Gipson) – As Amended June 15, 2022.** A true and correct  
10    copy of this document is attached as **Exhibit 9**. Exhibit 9 is a public record of the  
11    California State Legislature that I accessed on or about July 6, 2022, from  
12    <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>., the official  
13    California Legislative Information website, which publishes official legal history  
14    and government documents saved in a fully searchable, image-based format.

15           A court shall take judicial notice of such a fact if requested by a party and  
16    supplied with the necessary information. Fed. R. Evid. 201(d). Judicial notice of  
17    Exhibits 1 through 9 is proper because the documents for which this request is  
18    made are “capable of accurate and ready determination by resort to sources who  
19    accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Indeed, “[a]  
20    trial court may presume that public records are authentic and trustworthy.”  
21    *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999) (taking judicial  
22    notice of agency report).

23           What’s more, “[l]egislative history is properly a subject of judicial notice.”  
24    *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012); *Chaker v. Crogan*,  
25    428 F.3d 1215, 1223 n.8 (9th Cir. 2005) (discussing legislative history of California  
26    statute). Further, “a federal court must take judicial notice of state statutes ‘without  
27    plea or proof.’” *Getty Petroleum Mktg., Inc. v. Capital Terminal Co.*, 391 F.3d 312,  
28    323 (1st Cir. 2004) (citing *Lamar v. Micou*, 114 U.S. 218, 223 (1885)).

1 Here, the accuracy of all the public records subject to Plaintiffs' Request for  
2 Judicial Notice, consisting of enacted legislation and legislative history, cannot  
3 reasonably be questioned. Judicial notice of these records is therefore appropriate.  
4

5 Dated: July 19, 2022

**MICHEL & ASSOCIATES, P.C.**

*s/ Anna M. Barvir*

6 \_\_\_\_\_  
7 Anna M. Barvir  
8 Counsel for Plaintiffs Junior Sports  
9 Magazines, Inc., Raymond Brown, California  
10 Youth Shooting Sports Association, Inc.,  
11 Redlands California Youth Clay Shooting  
12 Sports, Inc., California Rifle & Pistol  
13 Association, Incorporated, The CRPA  
14 Foundation, and Gun Owners of California,  
15 Inc.

11 Dated: July 19, 2022

**LAW OFFICES OF DONALD KILMER, APC**

*s/ Donald Kilmer*

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13 Donald Kilmer  
14 Counsel for Plaintiff Second Amendment  
15 Foundation  
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# EXHIBIT 1

## Assembly Bill No. 2571

### CHAPTER 77

An act to add Chapter 39 (commencing with Section 22949.80) to Division 8 of the Business and Professions Code, relating to firearms, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 2022. Filed with Secretary of State June 30, 2022.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2571, Bauer-Kahan. Firearms: advertising to minors.

Existing law generally regulates manufacturers and dealers of firearms. Under existing law, commercial speech or advertising is generally protected under the First Amendment to the Constitution of the United States. Existing laws and regulations, however, restrict the content and placement of advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors.

This bill would prohibit a firearm industry member, as defined, from advertising or marketing any firearm-related product, as defined, in a manner that is designed, intended, or reasonably appears to be attractive to minors. The bill would also prohibit a firearm industry member from using, disclosing, or compiling a minor's personal information if it is intended to market or advertise a firearm to that minor, as specified. The bill would impose a civil penalty of up to \$25,000 for each violation of these provisions, and would authorize a person harmed by a violation to bring suit to recover any damages suffered, as specified. The bill would make each copy or republication of marketing or advertising prohibited by these provisions a separate violation. The bill would declare that its provisions are severable, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. (a) The Legislature hereby finds and declares that the proliferation of firearms to and among minors poses a threat to the health, safety, and security of all residents of, and visitors to, this state. These weapons are especially dangerous in the hands of minors because current research and scientific evidence shows that minors are more impulsive, more likely to engage in risky and reckless behavior, unduly influenced by peer pressure, motivated more by rewards than costs or negative consequences, less likely to consider the future consequences of their actions



and decisions, and less able to control themselves in emotionally arousing situations. In recognition of these facts, the Legislature has already prohibited minors from possessing firearms, except in certain limited circumstances. Nonetheless, firearms manufacturers and retailers continue to market firearms to minors, often identifying particular weapons as starter guns, especially good for children. As reflected in numerous laws regulating marketing of dangerous products to minors, children are especially susceptible to marketing appeals, as well as more prone to impulsive, risky, thrill-seeking, and violent behavior than other age groups. Firearms marketing contributes to the unlawful sale of firearms to minors, as well as the unlawful transfer of firearms to minors by adults who may possess those weapons lawfully. This state has a compelling interest in ensuring that minors do not possess these dangerous weapons and in protecting its citizens, especially minors, from gun violence and from intimidation by persons brandishing these weapons.

(b) It is the intent of the Legislature in enacting this act to further restrict the marketing and advertising of firearms to minors. Nothing in this chapter shall be construed to limit in any way the enforceability of existing law concerning firearms and marketing thereof.

SEC. 2. Chapter 39 (commencing with Section 22949.80) is added to Division 8 of the Business and Professions Code, to read:

#### CHAPTER 39. MARKETING FIREARMS TO MINORS

22949.80. (a) (1) A firearm industry member shall not advertise, market, or arrange for placement of an advertising or marketing communication concerning any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.

(2) In determining whether marketing or advertising of a firearm-related product is attractive to minors, as described in paragraph (1), a court shall consider the totality of the circumstances, including, but not limited to, whether the marketing or advertising:

(A) Uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products.

(B) Offers brand name merchandise for minors, including, but not limited to, hats, t-shirts, or other clothing, or toys, games, or stuffed animals, that promotes a firearm industry member or firearm-related product.

(C) Offers firearm-related products in sizes, colors, or designs that are specifically designed to be used by, or appeal to, minors.

(D) Is part of a marketing or advertising campaign designed with the intent to appeal to minors.

(E) Uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products.

(F) Is placed in a publication created for the purpose of reaching an audience that is predominately composed of minors and not intended for a more general audience composed of adults.

(b) A firearm industry member publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, shall not knowingly use, disclose, compile, or allow a third party to use, disclose, or compile, the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product.

(c) As used in this chapter:

(1) “Ammunition” has the same meaning as provided in subdivision (b) of Section 16150 of the Penal Code.

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

(3) “Firearm accessory” means an attachment or device designed or adapted to be inserted into, affixed onto, or used in conjunction with, a firearm which 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, carry, or use a firearm.

(4) “Firearm industry member” means any of the following:

(A) 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.

(B) A person, firm, corporation, company, partnership, society, joint stock company, or any other entity or association formed for the express purpose of promoting, encouraging, or advocating for the purchase, use, or ownership of firearm-related products that does one of the following:

(i) Advertises firearm-related products.

(ii) Advertises events where firearm-related products are sold or used.

(iii) Endorses specific firearm-related products.

(iv) Sponsors or otherwise promotes events at which firearm-related products are sold or used.

(5) “Firearm-related product” means a firearm, ammunition, reloaded ammunition, a firearm precursor part, a firearm component, or a firearm accessory that meets any of the following conditions:

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

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

(C) It is reasonably foreseeable that the item would be sold or possessed in California.

(D) Marketing or advertising for the item is directed to residents of California.

(6) “Marketing or advertising” means, in exchange for monetary compensation, to make a communication to one or more individuals, or to arrange for the dissemination to the public of a communication, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.

(7) “Minor” means a natural person under 18 years of age who resides in this state.

(d) This section shall not be construed to require or authorize a firearm industry member to collect or retain age information about users or subscribers of products or services offered.

(e) (1) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(2) The court shall impose a civil penalty under paragraph (1) for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(3) A person harmed by a violation of this section may commence a civil action to recover their actual damages.

(4) The court shall also order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the court deems necessary to prevent the harm described in this section.

(5) Upon a motion, a court shall award reasonable attorney's fees and costs, including expert witness fees and other litigation expenses, to a plaintiff who is a prevailing party in an action brought pursuant to this section.

(6) Each copy or republication of marketing or advertising prohibited by this section shall be deemed a separate violation.

(f) The provisions of this section are severable. If any portion, subdivision, paragraph, clause, sentence, phrase, word, or application of this section is for any reason held to be invalid by any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this chapter. The Legislature hereby declares that it would have adopted this section and each and every portion, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any other portion of this section or application thereof would be subsequently declared invalid.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect public safety by prohibiting firearm advertising to minors as soon as possible, it is necessary that this act take effect immediately.

# EXHIBIT 2

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 2571 (Bauer-Kahan) – As Amended April 7, 2022

**SUBJECT:** Firearms: advertising to minors

**SUMMARY:** This bill would prohibit the marketing or advertising of firearms to minors, as specified, would prohibit the use, disclosure, or compilation of a minor's personal information (PI) if there is actual knowledge that the PI is for the marketing or advertising a firearm, ammunition, or reloaded ammunition. Specifically, **this bill would:**

- 1) Prohibit a person, firm, corporation, partnership, or other organization publishing material directed to minors in any medium, including, but not limited to, print or broadcast media, internet-based media, or video games, from marketing or advertising in that material any firearm, ammunition, or reloaded ammunition, as specified.
- 2) Prohibit a person, firm, corporation, partnership, or other organization publishing a marketing or advertising communication, or arranging for placement of an advertising or marketing communication, from publishing or disseminating marketing or advertising for any firearm, ammunition, or reloaded ammunition that is attractive to minors.
- 3) Require a court to consider the following in determining whether marketing or advertising is attractive to minors:
  - Uses cartoon characters to promote firearms or firearms products.
  - Offers firearm brand name merchandise, such as hats, t-shirts, or stuffed animals, for minors.
  - Offers firearms or firearms accessories with colors or designs that are specifically designed to appeal to minors.
  - Is part of a marketing or advertising campaign designed with the intent to appeal to minors.
- 4) Prohibit a person, firm, corporation, partnership, or other organization publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm, ammunition, or reloaded ammunition, as specified.
- 5) Provide that the bill shall not be construed to require a person, firm, corporation, partnership, or other organization to collect or retain age information about users or subscribers of products or services offered.

- 6) Create a civil penalty not to exceed \$25,000 for each violation of the provisions above, brought by the Attorney General, by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.
- 7) Define “internet-based media” to mean directed to minors means an internet website, online service, online application, or mobile application, or a portion thereof, that is created for the purpose of reaching an audience that is predominately comprised of minors, and is not intended for a more general audience comprised of adults. An internet website, online service, online application, or mobile application, or a portion thereof, shall not be deemed to be directed to minors solely because it refers to or links to an internet website, online service, online application, or mobile application directed to minors, as specified.
- 8) Define “marketing or advertising” to mean, in exchange for monetary compensation, to make a communication to one or more individuals, or to arrange for the dissemination to the public of a communication, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.
- 9) Provide various findings and declarations related to how the proliferation of firearms to and among minors poses a threat to the health, safety, and security of all residents of, and visitors to, the state.

**EXISTING LAW:**

- 1) Requires, pursuant to the federal Children’s Online Privacy Protection Act (COPPA), that an operator of an internet website or online service directed to a child, as defined, or an operator of an internet website or online service that has actual knowledge that it is collecting personal information (PI) from a child to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator’s further collection of information from the child. (15 U.S.C. Sec. 6502.)
- 2) Prohibits, pursuant to the Privacy Rights for Minors in the Digital World, the operator of an internet website, online service, online application, or mobile application from:
  - marketing or advertising a product or service to a minor, if the minor cannot legally purchase the product or participate in the service in the State of California; or,
  - using, disclosing, or compiling, or knowingly allowing a third party to use, disclose, or compile, the PI of a minor for the purpose of marketing goods or services that minors cannot legally purchase or engage in in the State of California. (Bus. & Prof. Code Sec. 22580.)
- 3) Requires an operator of an internet website, online service, online application, or mobile application to do all of the following:
  - permit a minor who is a user of the operator’s internet website, service, or application to remove content or information submitted to or posted on the operator’s website, service or application by the user;

- provide notice to a minor who is the user of the operator’s internet website, service, or application that the minor may remove content or information submitted to or posted on the operator’s website, service, or application by the user; and,
  - provide notice to a minor who is the user of the operator’s internet website, service, or application that the removal described above does not ensure complete or comprehensive removal of the content or information. (Bus. & Prof. Code Sec. 22581.)
- 4) Establishes the California Consumer Privacy Act of 2018 (CCPA) and provides various rights to consumers pursuant to the act. Subject to various general exemptions, a consumer has, among other things:
- the right to know what PI a business collects about consumers, as specified, including the categories of third parties with whom the business shares PI;
  - the right to know what PI a business sells about consumers, as specified, including the categories of PI that the business sold about the consumer and the categories of third parties to whom the PI was sold, by category or categories of PI for each third party to whom the PI was sold;
  - the right to access the specific pieces of information a business has collected about the consumer;
  - the right to delete information that a business has collected from the consumer; and,
  - the right to opt-out of the sale of the consumer’s PI if over 16 years of age, and the right to opt-in if the consumer is a minor (as exercised by the parent if the minor is under 13, or as exercised by the minor if the minor is between ages 13 and 16); and,
  - the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)
- 5) Among other things, the California Privacy Rights Act (CPRA), enacted by Proposition 24 in 2020, creates a Privacy Protection Agency (PPA) in California, vested with full administrative power, authority, and jurisdiction to implement and enforce the CCPA. The agency shall be governed by a five-member board, with the chairperson and one member appointed by the Governor, and the three remaining members appointed by the Attorney General, the Senate Rules Committee, and the Speaker of the Assembly. (Civ. Code Sec. 1798.199.10.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to prohibit the marketing or advertising of firearms to minors. This bill is sponsored by Governor Gavin Newsom.

**2) Author's statement:** According to the Author:

Existing law does not limit marketing of firearms to children outside of the internet. Some firearms manufacturers irresponsibly market weapons to children. For example, Wee 1 Tactical has begun marketing an AR-15 made specifically for children. They currently market the weapon, called a JR-15, with a cartoon skull-and-crossbones with a pacifier. See <https://wee1tactical.com/>. Under current law, the company would be able to market this weapon in California, as long as it does so off-line, e.g., in a magazine advertisement.

This legislation would restrict the marketing and advertising of firearms to minors in all media. Specifically, this bill would prohibit a person or entity that publishes materials directed to minors in this state in any medium, or publishes advertising or marketing communications, from marketing or advertising firearms, ammunition, or reloaded ammunition to minors. Additionally, the bill would prohibit firearms marketing or advertising that is attractive to minors, regardless of whether the publication is directed to minors.

**3) Marketing and advertising of firearms to minors:** In 2016, the New York Times reported that the gun industry markets a variety of products specifically to minors and views children as a critically important group of future consumers:

The report, called "Start Them Young" and issued [...] by the Violence Policy Center, lists a variety of firearms meant at least partly for children. It mentions the Crickett rifle, a gun made for children by the company Keystone Sporting Arms. Keystone's website and some of its merchandise bear the image of "Davey Crickett," a gun-wielding cartoon insect. The company sells Davey Crickett hats, dog tags and pins, as well as a Davey Crickett Beanie Baby, listed as "not for children under three years of age."

Keystone's website also sells books featuring "Little Jake," a boy who uses his gun to bring down a bear and save an African village from a marauding elephant. The publisher of the books says Little Jake is actually older than he looks: "Little Jake is a fictional character in his late teens. While small in stature so that young children may relate to him, Little Jake is old enough to hunt and fish safely on his own without adult supervision."

"Start Them Young" also cites the rise of .22-caliber versions of higher-caliber rifles, often produced with lightweight materials. According to an article in the trade magazine Shooting Sports Retailer, "these guns bring the coolness and fun of the tactical rifle to kids and less serious shooters." The website of the retailer Gander Mountain describes one such weapon thus: "Designed for the indoor range and the youth shooter, this Carbon15 .22 LR Rimfire lightweight is sure to add new dimensions to your Bushmaster shooting pleasure. Operational controls are functionally and ergonomically identical to AR-15 type rifles. (North, *Marketing Guns to Children*, The N.Y. Times (Feb. 19, 2016) found at < <https://takingnote.blogs.nytimes.com/2016/02/19/marketing-guns-to-children/>> as of Apr. 12, 2022.)

Modeled largely off the Privacy Rights for California Minors in a Digital World (hereinafter, "Minors in a Digital World"), which prohibits online marketing or advertising a product or



service to a minor if the minor cannot legally purchase the product or participate in the service in California, this bill seeks to prohibit the advertising of firearms, ammunition, or reloaded ammunition to minors in *all* mediums in this state. The bill would restrict advertising and marketing in a number of ways, including prohibiting the advertising of firearms in any medium directed to children, prohibiting the marketing or advertising of firearms that is attractive to minors, and by limiting the collection, use, or disclosure of a minor's PI for the purpose of marketing or advertising firearms.

In support, March for Our Lives writes:

According to Everytown for Gun Safety, "Compared to other high-income countries, American children aged 5 to 14 are 21 times more likely to be killed with guns, and American adolescents and young adults aged 15 to 24 are 23 times more likely to be killed with guns." In a county where young people already face a high likelihood of facing harm or death due to firearms it is imperative that we do not allow gun manufacturers to continue the glorification of firearms.

- 4) **Minors in the Digital World creates limited restrictions with regard to minors' personal information and marketing:** In an effort to further protect minors online, the Legislature subsequently passed SB 568 (Steinberg, Ch. 336, Stats. 2013), known as Privacy Rights for California Minors in the Digital World, which prohibits the operator of an internet website or other online service or mobile application from marketing or advertising a product or service to a minor if the minor cannot legally purchase the product or participate in the service in California (including firearms), or, compiling PI to market those products or services. This prohibition only applies to operators that have *actual* knowledge that a minor is using its online service or whose site service is directed to minor, rather than a general audience.

SB 568 was opposed by the Center for Democracy and Technology who took issue with the bill's limitation that a website must be directed to minors for the provisions of the bill to apply. SB 568, now codified beginning at Business and Professions Code Sec. 22580, provides that a site or service is "directed to minors" if it is "created for the purpose of reaching an audience that is *predominantly* composed of minors, and is not intended for a more general audience comprised of adults." (Emphasis added.) The definition adds that a site or service would not be deemed to be "directed at minors" merely because it contained links to sites or services that were directed to minors.

Despite the protections put into place in Minors in a Digital World, we have since seen how websites and social media companies collect and use the PI of residents in ways that most people never anticipated, and have also seen how these businesses have been able to skirt the intent of legislation designed to protect children through vague terms of service and intentional disregard of the age of their audience. (See this Committee's Background Paper from a March 29, 2022 entitled, *Protecting Kids Online: Challenges & Opportunities in a Digital World* at p. 10.)

To this day, many social media companies and online marketplaces that are widely known to be used broadly by children, have been able to avoid compliance with state and federal laws designed to protect children by claiming that they have no actual knowledge of child users under the age of 13. The Legislature recently sought to address this problem with the passage of the CCPA, which, in part, provides that "a business that willfully disregards the

consumer’s age shall be deemed to have had actual knowledge of the consumer’s age.” (Civ. Code Sec. 1798.120(c).)

By copying the language related to PI collection and disclosure from Minors in the Digital World and incorporating the “directed to minors” concept, this bill would seemingly allow businesses, manufacturers, and other organizations, so long as they could reasonably claim their medium was directed to a general audience, to: 1) advertise firearms to minors; and 2) collect and sell the information of minors for the purposes of advertising firearms to them. This does not appear to reflect the intent of the author or sponsor.

Accordingly, as this bill moves through the legislative process, the author may wish to consider amending the bill to better ensure that businesses, online and otherwise, are not required to have actual knowledge of an individual’s age before these provisions of the bill apply, or otherwise market to general audiences to avoid this bill’s restrictions against marketing firearms to children. Staff additionally notes that this bill does not define “directed to minors” but instead defines “internet-based media”. Given that the “direct to minors” concept is used in relation to all material and not just material online, the author may wish to define the phrase so that it applies uniformly across all mediums the bill seeks to regulate.

- 5) **AB 2571 prohibits advertising of firearms that is attractive to minors:** In addition to prohibiting advertising of firearms in material “directed to children,” as discussed above, this bill would additionally prohibit any “person, firm, corporation, partnership, or other organization publishing a marketing or advertising communication, or arranging for placement of an advertising or marketing communication, from publishing or disseminating marketing or advertising for any firearm, ammunition, or reloaded ammunition.” Unlike the prohibition discussed in Comment 4, above, the prohibition on marketing of firearms that are “attractive to children” applies whether the media is directed to children or a general audience. In other words, it applies to all marketing, regardless of the target audience. Further, the prohibition applies to “marketing communications” and “arranging for advertising or marketing communications” which appears to be broader than traditional media.

The bill requires that what will be deemed to be “attractive to minors” should be decided after a court considers the totality of the circumstances, including but not limited to whether the marketing or advertising:

- Uses cartoon characters to promote firearms or firearms products.
- Offers firearm brand name merchandise, such as hats, t-shirts, or stuffed animals, for minors.
- Offers firearms or firearms accessories with colors or designs that are specifically designed to appeal to minors.
- Is part of a marketing or advertising campaign designed with the intent to appeal to minors.

Advertising, while often regulated to protect consumers, is a form of commercial speech protected by the First Amendment. Staff notes that this bill has been referred to the Assembly Judiciary Committee, where it will be analyzed if passed by this Committee.

First Amendment issues, including issues of commercial speech, typically fall within the jurisdiction of that committee. Similarly, this bill creates a civil penalty to be enforced by public prosecutors for violations of its provisions. Issues of liability and enforcement typically fall within the jurisdiction of that committee.

- 6) **Prior legislation:** AB 1545 (Wicks, 2021) would have enacted the Kids Internet Design and Safety (KIDS) Act and prohibited an operator of an online platform from incorporating certain features with respect to children’s content without first obtaining parental consent.

AB 1138 (Gallagher, 2019) sought to prohibit a person or business that conducts business in California, and that operates a social media website or application, from allowing a person under 16 years of age to create an account with the website or application unless the website or application obtains the consent of the person’s parent or guardian before creating the account.

AB 1665 (Chau, 2019) as introduced, would have prohibited a person or business that conducts business in California, that operates an internet website or application that seeks to use a minor’s name, picture, or any information about the minor in connection with third party advertising, as specified, from doing so without obtaining prior parental consent.

AB 375 (Chau, Ch. 55, Stats. 2018) enacted the California Consumer Privacy Protection Act (CCPA), which gives consumers certain rights regarding their PI, including: (1) the right to know what PI that is collected and sold about them; (2) the right to request the categories and specific pieces of PI the business collects about them; and (3) the right to opt-out of the sale of their PI, or opt-in in the case of minors under 16 years of age.

SB 568 (Steinberg, Ch. 336, Stats. 2013) *See* Comment 3.

- 7) **Double referral:** This bill was double referred to the Assembly Judiciary Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

- City of Mountain View
- Everytown for Gun Safety Action Fund
- March for Our Lives Action Fund
- Moms Demand Action for Gun Sense in America
- Students Demand Action for Gun Sense in America

**Opposition**

None on file

**Analysis Prepared by:** Nichole Rocha / P. & C.P. / (916) 319-2200

# EXHIBIT 3

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 2571 (Bauer-Kahan) – As Amended April 7, 2022

As Proposed to be Amended

**SUBJECT:** FIREARMS: ADVERTISING TO MINORS

**KEY ISSUES:**

- 1) SHOULD STATE LAW PROHIBIT FIREARM INDUSTRY MEMBERS FROM MARKETING AND ADVERTISING FIREARMS AND FIREARM-RELATED PRODUCTS IN A MANNER THAT IS ATTRACTIVE TO MINORS?
- 2) SHOULD THE AG, CITY ATTORNEYS AND COUNTY COUNSELS, AND PERSONS HARMED BY THE ADVERTISING AND MARKETING OF FIREARMS AND FIREARM-RELATED PRODUCTS TO MINORS, BE ABLE TO BRING A CIVIL ACTION TO ENFORCE THIS PROHIBITION AND COLLECT CIVIL PENALTIES AND DAMAGES?

**SYNOPSIS**

*The firearm industry has developed a number of advertising and marketing schemes to “start ‘em young”: entice children to be interested in possessing and using firearms that they cannot lawfully purchase and generally cannot possess through the use of gun-toting cartoon characters, children’s books about boys and girls who commit heroic acts with guns, and gun-themed children’s clothing, toys, and pins. Most concerning, gun makers are marketing child-sized guns, including assault-style rifles, and guns in colors or with designs specifically for children.*

*The bill in print restricts two different types of publications of advertising material promoting the sale of firearms, depending on the intended consumer of the publication. First, if the published material is “directed to minors,” the publisher would be prohibited from marketing or advertising for sale any firearm, ammunition, or reloaded ammunition in that publication. Secondly, and far more broadly, any person who publishes a “marketing or advertising communication” or who “arranges for placement” of such a communication, would be prohibited from publishing or disseminating any material marketing or advertising for sale any firearm, ammunition, or reloaded ammunition that is attractive to minors. Given efficacy, vagueness, First Amendment, and federal preemption concerns related to these provisions, the author proposes to revise the bill to achieve its goals in a more effective and focused, but less problematic way.*

*As proposed to be amended, the bill would focus on the advertising, marketing, and placing of advertising and marketing by only firearm industry members (as defined by the bill), rather than on publishers, and would prohibit those industry members from engaging in specific acts. Specifically, a firearm industry member would be prohibited from advertising, marketing, or arranging for placement any advertising or marketing communication concerning a firearm-related product when the communication is designed, intended, or reasonably appears to make*

*the firearm-related product attractive to minors. As proposed to be amended, the bill also would allow a person harmed by a violation to commence a civil action to recover their actual damages for harms caused for the violation. This would appropriately provide compensation to a plaintiff in a case where they could demonstrate a causal link between the marketing or advertising of a particular firearm-related product by a particular firearm industry member and the resulting harm, such as a child misusing the firearm-related product and injuring themselves or others. Just as in a case brought by a public attorney, in a case brought by an injured party, the court would be required to order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the misconduct. Likewise, in both types of causes of action, upon a motion, a court would be required to award reasonable attorney's fees and costs, including expert witness fees and other litigation expenses, to a prevailing plaintiff.*

*The analysis discusses (1) why the bill raises potential First Amendment concerns in that it regulates commercial speech, but how it likely would be found constitutional; (2) how similar advertising restrictions are in place for products that minors cannot purchase; (3) why an exception to the federal law shielding gun dealers and manufacturers from civil liability actions brought in state or federal court for harm incurred due to the illegal use of non-defective products, the Protection of Lawful Commerce in Arms Act (PLCAA), would allow civil liability to be imposed under the bill; (4) why the bill does not infringe on the Second Amendment right to keep and bear arms; and (5) why the author may wish to consider the alternative or additional steps of making firearms designed for children illegal to sell in California.*

*The bill was previously approved by the Assembly Committee on Privacy and Consumer Protection (by a vote of 7-1). It is supported by a number of gun safety advocacy organizations and opposed by the National Rifle Association. The author's amendments are incorporated into the SUMMARY, below, and explained in the analysis.*

**SUMMARY:** Prohibits firearm industry members from marketing or advertising firearm-related products to minors and authorizes public attorneys and injured plaintiffs to bring a civil action to enforce the prohibition, obtain injunctive relief, and seek either civil penalties, or, in some cases, damages for harms caused by a violation. Specifically, **this bill:**

- 1) On behalf of the Legislature, finds and declares that the proliferation of firearms to and among minors poses a threat to the health, safety, and security of all residents of, and visitors to, this state.
  - a) These weapons are especially dangerous in the hands of minors because current research and scientific evidence shows that minors are more impulsive, more likely to engage in risky and reckless behavior, unduly influenced by peer pressure, motivated more by rewards than costs or negative consequences, less likely to consider the future consequences of their actions and decisions, and less able to control themselves in emotionally arousing situations.
  - b) In recognition of these facts, the Legislature has already prohibited minors from possessing firearms, except in certain limited circumstances.
  - c) Nonetheless, firearms manufacturers and retailers continue to market firearms to minors, often identifying particular weapons as starter guns, especially good for children. As reflected in numerous laws regulating marketing of dangerous products to minors,

children are especially susceptible to marketing appeals, as well as more prone to impulsive, risky, thrill-seeking, and violent behavior than other age groups.

- d) Firearms marketing contributes to the unlawful sale of firearms to minors, as well as the unlawful transfer of firearms to minors by adults who may possess those weapons lawfully.
  - e) This state has a compelling interest in ensuring that minors do not possess these dangerous weapons and in protecting its citizens, especially minors, from gun violence and from intimidation by persons brandishing these weapons.
- 2) States that it is the intent of the Legislature in enacting this bill to further restrict the marketing and advertising of firearms to minors. Nothing in this bill will be construed to limit in any way the enforceability of existing law concerning firearms and marketing thereof.
  - 3) Provides that a firearm industry member shall not advertise, market, or arrange for placement of an advertising or marketing communication concerning any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.
  - 4) Requires a court, in determining whether marketing or advertising of a firearm-related product is attractive to minors, to consider the totality of the circumstances, including, but not limited to, whether the marketing or advertising:
    - a) Uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products.
    - b) Offers brand name merchandise for minors, including but not limited to, hats, t-shirts or other clothing, toys, games, stuffed animals, that promotes a firearm industry member or firearm-related product.
    - c) Offers firearm-related products in sizes, colors or designs that are specifically designed to be used by, or appeal to, minors.
    - d) Is part of a marketing or advertising campaign designed with the intent to appeal to minors.
    - e) Uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products.
    - f) Is placed in a publication created for the purpose of reaching an audience that is predominately comprised of minors and not intended for a more general audience comprised of adults.
  - 5) Prohibits a firearm industry member from publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, and from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product.

- 6) Defines the following for purposes of the bill:
- 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 which 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, carry or use a firearm.
  - d) “Firearm industry member” shall mean one of the following:
    - i) 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.
    - ii) A person, firm, corporation, company, partnership, society, joint stock company, or any other entity or association formed for the express purpose of promoting, encouraging, or advocating for the purchase, use, or ownership of firearm-related products that does one of the following:
      - A) Advertises firearm-related products.
      - B) Advertises events where firearm-related products are sold or used.
      - C) Endorses specific firearm-related products.
      - D) Sponsors or otherwise promotes events at which firearm-related products are sold or used.
  - e) “Firearm-related product” means a firearm, ammunition, reloaded ammunition, a firearm precursor part, a firearm component, or a firearm accessory that meets any of the following conditions:
    - i) The item is sold, made, or distributed in California.
    - ii) The item is intended to be sold or distributed in California.
    - iii) It is reasonably foreseeable that the item would be sold or possessed in California.
    - iv) Marketing or advertising for the item is directed to residents of California.
  - f) “Marketing or advertising” means, in exchange for monetary compensation, to make a communication to one or more individuals, or to arrange for the dissemination to the public of a communication, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.
  - g) “Minor” means a natural person under 18 years of age who resides in this state.



- h) "Person" means a natural person, firm, corporation, partnership, or other organization.
- 7) Provides that the bill shall not be construed to require or authorize a firearm industry member to collect or retain age information about users or subscribers of products or services offered.
- 8) Provides that any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed \$25,000 for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.
- 9) Requires the court to impose a civil penalty for each violation of this bill. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to:
  - a) The nature and seriousness of the misconduct,
  - b) The number of violations,
  - c) The persistence of the misconduct,
  - d) The length of time over which the misconduct occurred,
  - e) The willfulness of the defendant's misconduct, and
  - f) The defendant's assets, liabilities, and net worth.
- 10) Allows a person harmed by a violation of the bill to commence a civil action to recover their actual damages.
- 11) Provides that the court shall also order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the court deems necessary to prevent the harm described in this bill.
- 12) Provides that upon a motion, a court shall award reasonable attorney's fees and costs, including expert witness fees and other litigation expenses, to a plaintiff who is a prevailing party in the action.
- 13) Deems each copy or republication of marketing or advertising prohibited by the bill to be a separate violation.
- 14) Makes the provisions of the bill severable.
  - a) If any portion, subdivision, paragraph, clause, sentence, phrase, word, or application of this section is for any reason held to be invalid by any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this chapter.
  - b) The Legislature hereby declares that it would have adopted this provision and each and every portion, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any other portion of this provision or application thereof would be subsequently declared invalid.

**EXISTING LAW:**

- 1) Makes everyone responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care of skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury on themselves. (Civil Code Section 1714 (a).)
- 2) Prohibits, pursuant to the Privacy Rights for Minors in the Digital World, the operator of an internet website, online service, online application, or mobile application from:
  - a) Marketing or advertising a product or service to a minor, if the minor cannot legally purchase the product or participate in the service in the State of California; or,
  - b) Using, disclosing, or compiling, or knowingly allowing a third party to use, disclose, or compile, the personal information of a minor for the purpose of marketing goods or services that minors cannot legally purchase or engage in in the State of California. (Business & Professions Code Section 22580.)
- 3) Defines “ammunition” to include any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding device, or projectile capable of being fired from a firearm with a deadly consequence. Specifies that “ammunition” does not include blanks. (Penal Code Section 16150 (b).)
- 4) Defines “firearm” as a device designed to be used as a weapon and from which is expelled, through a barrel, a projectile by the force of an explosion or other form of combustion. Specifies that “firearm” includes the frame or receiver of the weapon. (Penal Code Section 16520 (a)-(b).)
- 5) Defines “firearm precursor part” to mean a component of a firearm that is necessary to build or assemble a firearm and is either an unfinished handgun frame or an unfinished receiver, including both a single part receiver and a multiple part receiver. Requires the Department of Justice to provide written guidance and pictorial diagrams of each category of precursor parts. Exempts from this definition firearms parts that can only be used on antique firearms. Specifies that a firearm precursor part is not a firearm or the frame or receiver thereof. (Penal Code Section 16531.)
- 6) Prohibits, under the federal Protection of Lawful Commerce in Arms Act, a civil liability action from being brought in state or federal court by a person against a manufacturer or seller of a specified firearm or component part, or trade association, for relief resulting from the criminal or unlawful misuse of a firearm or component part by the person or a third party. Provides that specified actions are exempt from this prohibition, including an action in which the seller or manufacturer knowingly violated a state or federal statute applicable to the sale or marketing of the product, and in which the violation was a proximate cause of the harm for which relief is sought. (15 U.S.C. Sec 7902.)
- 7) Requires, pursuant to the federal Children’s Online Privacy Protection Act (COPPA), that an operator of an internet website or online service directed to a child, as defined, or an operator of an internet website or online service that has actual knowledge that it is collecting personal information (PI) from a child to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to

refuse to permit the operator's further collection of information from the child. (15 U.S.C. Sec. 6502.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** This bill seeks to prohibit firearm industry members from marketing or advertising firearm-related products to minors. It would also authorize public attorneys and injured plaintiffs to bring a civil action to enforce this prohibition, seek imposition of civil penalties, and, in some cases, obtain damages for harms caused by a violation. According to the author:

Some firearms manufacturers irresponsibly market weapons to children. For example, Wee 1 Tactical has begun marketing an AR-15 made specifically for children. They currently market the weapon, called a JR-15, with a cartoon skull-and-crossbones with a pacifier. . . . Under current law, the company would be able to market this weapon in California, as long as it does so off-line, e.g., in a magazine advertisement.

This legislation would restrict the marketing and advertising of firearms to minors in all media. Specifically, this bill would prohibit [a firearm industry member] . . . from marketing or advertising firearms, ammunition, or reloaded ammunition to minors.

The bill in print restricts two different types of publications from advertising material promoting the sale of firearms, depending on the intended consumer of the publication. First, if the published material is "***directed to minors***," the publisher would be prohibited from marketing or advertising for sale any firearm, ammunition, or reloaded ammunition in that publication. Secondly and far more broadly, any person who publishes a "marketing or advertising communication" or who "arranges for placement" of such a communication, would be prohibited from publishing or disseminating any material marketing or advertising for sale any firearm, ammunition, or reloaded ammunition that is ***attractive to minors***.

The California Broadcasters Association, the California News Publishers, and First Amendment Coalition raised concerns about the bill in print and its impacts beyond advertisers:

While it might be constitutional to prohibit advertising the illegal sale of firearms to minors, the definition of "marketing or advertising" goes far beyond that. It covers any "communication" about a "product or service" made for "monetary compensation," the "primary purpose of which is to encourage recipients of the communication to purchase or use the product or service," even lawfully. The mere fact of "monetary compensation" for producing speech does not make the speech purely commercial. *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1117 (9th Cir. 2021) (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 67 (1983)).

The bill would also prohibit any speech deemed to have the "primary purpose" of encouraging even lawful use of firearms. For example, the bill would likely prohibit a video promoting lawful use of firearms by minors for target shooting under parental supervision after gun safety training.

In addition, the bill's broad sweep and draconian penalties would exert a chilling effect on protected speech such as movies, music, or video games, for fear that the government might deem that such speech has the "primary purpose" of "encouraging" firearm use. Even if such

speech were deemed to encourage unlawful firearm use, "[t]he mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002).

Given efficacy, vagueness, First Amendment, and federal preemption concerns related to these provisions, the author proposes to revise the bill to achieve its goals in a more effective and focused, but less problematic way. As proposed to be amended, the bill would focus on the advertising, marketing, and placing of advertising and marketing by only firearm industry members (as defined by the bill), rather than on publishers, and would prohibit those industry members from engaging in specific acts. It is unclear the extent to which the author's proposed amendment address the concerns raised by the Broadcasters, News Publishers, and First Amendment Coalition.

Under the bill, as it is proposed to be amended, a firearm industry member would be prohibited from advertising, marketing, or arranging for placement any advertising or marketing communication concerning a firearm-related product when the communication is designed, intended, or reasonably appears to make the firearm-related product attractive to minors. The bill then requires a court, in determining whether the marketing or advertising communication makes the firearm-related product attractive to minors, to consider "the totality of the circumstances," including but not limited to whether the marketing or advertising does any of the following:

- (A) Uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products.
- (B) Offers brand name merchandise for minors, including but not limited to, hats, t-shirts or other clothing, toys, games, stuffed animals, that promotes a firearm industry member or firearm-related product.
- (C) Offers firearm-related products in sizes, colors or designs that are specifically designed to be used by, or appeal to, minors.
- (D) Is part of a marketing or advertising campaign designed with the intent to appeal to minors.
- (E) Uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products.
- (F) Is placed in a publication created for the purpose of reaching an audience that is predominately comprised of minors and not intended for a more general audience comprised of adults.

**Remedies for Violations.** The bill authorizes two types of civil actions to enforce compliance with its provisions. First the Attorney General or any district attorney, county counsel, or city attorney would be authorized to bring a civil action in any court of competent jurisdiction in the name of the people of the State, county, or city, as appropriate, to seek a civil penalty. Any person found in such an action to have violated any provision of the bill would be liable for a civil penalty not to exceed \$25,000 for each violation. The bill specifies a number of factors that courts should rely upon in evaluating whether or not to impose the maximum \$25,000 civil penalty: the nature and seriousness of the misconduct, the number of violations, the persistence

of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

As proposed to be amended, the bill also would allow a person harmed by a violation to commence a civil action to recover their actual damages for harms caused for the violation. This would appropriately provide compensation to a plaintiff in a case where they could demonstrate a causal link between the marketing or advertising of a particular firearm-related product by a particular firearm industry member and the resulting harm, such as a child misusing the firearm-related product and injuring themselves or others. Just as in a case brought by a public attorney, in a case brought by an injured party, the court would be required to order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the misconduct. Likewise, in both types of causes of action, upon a motion, a court would be required to award reasonable attorney's fees and costs, including expert witness fees and other litigation expenses, to a prevailing plaintiff. The bill also clarifies that each copy or republication of marketing or advertising prohibited by the bill would be deemed to be a separate violation.

In order to clarify that the bill is intended to be a state-specific measure, the bill defines a "firearm-related product" as a product (specifically a firearm, ammunition, reloaded ammunition, a firearm precursor part, a firearm component, or a firearm accessory) that meets any of the following conditions:

- The item is sold, made, or distributed in California.
- The item is intended to be sold or distributed in California.
- It is reasonably foreseeable that the item would be sold or possessed in California.
- Marketing or advertising for the item is directed to residents of California.

Finally, the bill includes two important privacy protections for personal information of minors. First, the bill prohibits a firearm industry member from publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, and from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product. Second, it clarifies that the bill shall not be construed to require or authorize a firearm industry member to collect or retain age information about users or subscribers of products or services offered. These provisions are within the jurisdiction and expertise of the Committee on Privacy & Consumer Protection which previously heard and approved the bill.

***Background – Firearm Industry Efforts to Market Firearms and Firearm Products to Minors.***

In 2016, the New York Times reported that the gun industry markets a variety of products specifically to minors and views children as a critically important group of future consumers:

The report, called "Start Them Young" and issued [...] by the Violence Policy Center, lists a variety of firearms meant at least partly for children. It mentions the Crickett rifle, a gun made for children by the company Keystone Sporting Arms. Keystone's website and some of its merchandise bear the image of "Davey Crickett," a gun-wielding cartoon insect. The company sells Davey Crickett hats, dog tags and pins, as well as a Davey Crickett Beanie Baby, listed as "not for children under three years of age."

Keystone’s website also sells books featuring “Little Jake,” a boy who uses his gun to bring down a bear and save an African village from a marauding elephant. The publisher of the books says Little Jake is actually older than he looks: “Little Jake is a fictional character in his late teens. While small in stature so that young children may relate to him, Little Jake is old enough to hunt and fish safely on his own without adult supervision.”

“Start Them Young” also cites the rise of .22-caliber versions of higher-caliber rifles, often produced with lightweight materials. According to an article in the trade magazine Shooting Sports Retailer, “these guns bring the coolness and fun of the tactical rifle to kids and less serious shooters.” The website of the retailer Gander Mountain describes one such weapon thus: “Designed for the indoor range and the youth shooter, this Carbon15 .22 LR Rimfire lightweight is sure to add new dimensions to your Bushmaster shooting pleasure. Operational controls are functionally and ergonomically identical to AR-15 type rifles. (North, *Marketing Guns to Children*, The N.Y. Times (Feb. 19, 2016) found at <<https://takingnote.blogs.nytimes.com/2016/02/19/marketing-guns-to-children/>> as of Apr. 12, 2022.)

***The bill restricts some marketing and advertising of firearms, raising potential First Amendment Concerns.*** The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” (U.S. Const., amend. I.) While commercial speech is a type of content-based restriction, and content-based restrictions ordinarily receive strict scrutiny analysis under the First Amendment, the U.S. Supreme Court has held that the First Amendment accords commercial speech lesser protection than other constitutionally guaranteed expression. This is in part because, unlike other varieties of speech, speech proposing a commercial transaction occurs in an area traditionally subject to governmental regulation. (*Central Hudson Gas & Elec. Corp. v. Public Service Commission* (1980) 447 U.S. 557, 562-63.) Furthermore, a blanket prohibition against truthful, nonmisleading speech about a lawful product, which serves an end unrelated to consumer protection, must be reviewed with skepticism. A “state legislature does not have the broad discretion to suppress truthful, nonmisleading information for paternalistic purposes[.]” (*44 Liquormart, Inc. v. Rhode Island* (1996) 517 U.S. 484, 510.) Ultimately, the First Amendment prohibits commercial speech against “unwarranted” governmental regulation. However, only truthful, non-misleading commercial speech is protected by the First Amendment.

The U.S. Supreme Court has articulated a four-prong test by which commercial speech regulations are evaluated for constitutionality. This test asks: (1) whether the expression concerns lawful activity and is not misleading; (2) whether the asserted governmental interest is substantial; (3) whether the regulation directly advances the governmental interest asserted; and (4) whether it is not more extensive than is necessary to achieve that interest. (*Central Hudson Gas & Elec. Corp.*, *supra*, 447 U.S. at pp. 561-66.)

Here, on the **first prong**, the truthfulness and misleading nature of information in marketing materials in which firearm-related products are attractive to minors (thereby encouraging children to use firearms), is debatable. California law generally prohibits minors from possessing a handgun and most semi-automatic rifles (Penal Code Section 29610), as well as ammunition (Penal Code 30300 (a)). Exceptions to this prohibition include situations where a parent or legal guardian is present or has consented to the possession, or when minors are engaged in certain

recreational sports. (Penal Code Section 29615.) While it *may* technically be legal for a child to possess a firearm, lawful possession of a firearm by a minor is clearly the exception, rather than the rule under California law. Therefore, advertising and marketing materials that encourage minors to possess and use firearms may or may not concern a lawful activity and certainly could be misleading if it fails to make those points clear. Therefore, it is possible that a court could find that a particular marketing or advertising campaign was *not protected commercial speech* under First Amendment jurisprudence. (See *Central Hudson Gas & Elec. Corp.*, *supra*, 447 U.S. at p. 566 [neither deceptive speech nor speech that proposes an illegal transaction is protected by the First Amendment].) The possibility and even likelihood that marketing or advertising of firearm-related products that makes those products attractive to children who, in most cases, cannot lawfully possess them, greatly strengthens the argument that the bill's restrictions on the marketing and advertising of firearm-related products would withstand constitutional scrutiny.

On the **second prong**, the important government interests of this bill are reflected in the bill's findings and declarations. California not only has a compelling interest in ensuring that minors do not possess these dangerous weapons, but also in protecting its citizens, including and especially minors, from gun violence. On the **third prong**, by restricting the marketing and advertising by the firearms industry of firearm-related products that are attractive to children, this bill would directly advance its stated governmental interests to limit the exposure of, and consumption by, minors to such advertising and marketing material, given the lethality (and general illegality for minors) of the products being advertised.

As with most commercial speech regulations, the ultimate determination of constitutionality may hinge upon the **fourth prong**. Recent Supreme Court jurisprudence suggests that while the regulation chosen does not have to be the least restrictive alternative, it must use a means that is substantially related to the desired objective. (See *e.g. Greater New Orleans Broadcasting Assn. v. U.S.* (1999) 527 U.S. 173 and *Thompson v. Western States Med. Center* (2002) 535 U.S. 357.)

In this case, the bill as proposed to be amended focuses on advertising and marketing materials that are promulgated by a narrowly defined group of commercial speakers—the firearm industry—rather than on publishers, or even advertisers, in general. Given that these are the only groups that generally engage in this type of commercial speech, the means used by the bill seem narrowly tailored to address the source of the harmful marketing and advertising content, rather than focused on its dissemination. Furthermore, the type of advertising and marketing at issue in this bill is not generally directed towards lawful purchasers of firearms (i.e. adults); rather, they are specifically designed to appeal to, and be directed at, children. Therefore, denying this form of advertising and marketing does not significantly impact a protected interest that firearm industry members have to furnish truthful information to would-be lawful purchasers who have a corresponding interest in receiving such information. (See *Discount Tobacco City & Lottery, Inc. v. United States* (6<sup>th</sup> Cir. 2012) 674 F.3d 509, 520.) Finally, with the findings incorporated into the bill—that firearms marketing and advertising contributes to the unlawful sale of firearms to minors, as well as the unlawful transfer of firearms to minors by adults who may possess those weapons lawfully—the bill seems substantially related to the achievement of its objective.

***Similar Restrictions on Advertising and Marketing of Contraband to Minors.*** Existing state law places limits on the advertising of other products that adults may lawfully purchase and use, but which minors may not, such as alcohol, marijuana, electronic cigarettes and vapes, and tobacco. Each year in the United States, companies spend billions of dollars advertising alcohol and tobacco products, while popular television shows and movies often depict smoking and

drinking in a positive light. Studies show that young people are often inclined to use drugs or alcohol themselves due to these influential depictions of substance use. Research on the effects of advertising has shown that they may be responsible for up to 30% of underage tobacco and alcohol use. (John P. Pierce, Won S. Choi, Elizabeth Gilpin (1998), *Journal of the American Medical Association*; 279 (7): pp. 511-515, available at: <https://jamanetwork.com/journals/jama/fullarticle/187258>.) On the other hand, restrictions on alcohol advertising are associated with both (1) lower prevalence and frequency of adolescent alcohol consumption; and (2) older age of first alcohol use. (Paschall, M. J., Grube, J. W., & Kypri, K. (2009). Alcohol control policies and alcohol consumption by youth: A multi-national study. *Addiction*, 104(11), 1849–1855, available at <https://pubmed.ncbi.nlm.nih.gov/19832785/>.)

*Alcohol.* California law imposes numerous restrictions on advertising of alcohol in a manner that appeals to persons who are underage. For example, coin banks, toys, balloons, magic tricks, miniature bottles or cans, confections, dolls, or other items that appeal to minors or underage drinkers may not be used in connection with the merchandising of beer. (Business & Professions Code Section 25600 (b)(2)(D).) The size of alcohol advertisements (relative to window size) and location is also restricted. For example, no more than 33 percent of the square footage of the windows and clear doors of an off-sale premises can bear advertising or signs of any sort. (Business & Professions Code Section 25612.5.)

*Tobacco.* In order to settle civil lawsuits filed by Attorneys General of more than 40 states and territories against several tobacco product manufacturers, America’s largest tobacco manufacturers, including Philip Morris, R.J. Reynolds, Brown & Williamson, and Lorillard, agreed to settle the litigation with the states on November 23, 1998 in the Master Settlement Agreement (MSA). (*The Master Settlement Agreement: An Overview* (2019) Public Law Center-Tobacco Control Legal Consortium.) In addition to imposing significant restrictions on tobacco advertising, as part of the settlement, the participating states released the participating manufacturers from liability for healthcare costs incurred by the states for smoking related illnesses. (*Ibid.*) Among other things, the MSA prohibited R.J. Reynolds from posting billboards or other signs advertising its Winston sponsorships at auto race tracks more than 90 days before and 10 days after a sponsored event at the site. The restriction, which the R.J. Reynolds argued amounted to a nearly year-long ban, was upheld. (*People of the State of California v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516.) The Attorney General also successfully enforced the MSA ban on cartoon characters in the case of R.J. Reynolds’ Farm Rocks images. (*In re Tobacco Cases I* (2010) 186 Cal.App.4th 42; *In re Tobacco Cases I* (2011) 193 Cal.App.4th 1591.)

*Cannabis.* State law provides that any advertising or marketing placed in broadcast, cable, radio, print, and digital communications shall only be displayed where at least 71.6 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition data. (Business & Professions Code Section 26131 (b).) Furthermore, any advertising or marketing involving direct, individualized communication or dialogue controlled by the licensee must utilize a method of age affirmation to verify that the recipient is 21 years of age or older before engaging in that communication or dialogue controlled by the licensee. (*Id.* at (c).)

***Immunity for gun manufacturers and dealers under PLCAA; and exceptions.*** As a general rule, “[e]veryone is responsible, not only for the result of [their] willful acts, but also for an injury occasioned to another by [their] want of ordinary care of skill in the management of [their]



property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury [on themselves].” (Civil Code Section 1714 (a).) According to the California Supreme Court, Section 1714 embodies a fundamental principle of liability for failure to exercise such care, and that “it is clear that in the absence of statutory provision declaring an exception to the fundamental principle enunciated by Civil Code Section 1714, no such exception should be made unless clearly supported by public policy.” (*Rowland v. Christian* (1968) 69 Cal. 2d 108, 112.)

Despite this principle of personal accountability for wrongdoing, as well as the state’s numerous gun restrictions, the right to file a civil action against a gun manufacturer or dealer is hamstrung by a federal immunity statute titled the Protection of Lawful Commerce in Arms Act. (15 U.S.C. Sec 7902.) Signed by President George W. Bush in 2005, the Protection of Lawful Commerce in Arms Act (PLCAA) prohibits civil liability actions from being brought in state or federal court against gun dealers and manufacturers for harm incurred due to the illegal use of non-defective products. Importantly, the PLCAA specifies six exceptions to this prohibition:

- 1) An action brought against someone convicted of “knowingly transfer[ing] a firearm, knowing that such firearm will be used to commit a crime of violence” by someone harmed by such unlawful conduct;
- 2) An action brought against a seller for negligent entrustment or negligence;
- 3) An action in which a manufacturer or seller of a firearm, ammunition, or components parts *knowingly violated a state or federal statute applicable to the sale or marketing of the product*, and the violation was a proximate cause of the harm for which relief is sought;
- 4) An action for breach of contract or warranty in connection with the purchase of the product;
- 5) “An action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage;”
- 6) An action commenced by the Attorney General to enforce the Gun Control Act or the National Firearms Act.

The third exception, also known as the “predicate exception,” has been the subject of considerable judicial scrutiny. Under this exception, a plaintiff may bring a suit if they successfully prove that a manufacturer or dealer knowingly violated an underlying statute “applicable to the sale or marketing” of a firearm or ammunition and this violation was the proximate cause of the harm. Two federal appellate rulings have adopted a narrow interpretation of the word “applicable,” ruling that “applicable” statutes are those that specifically regulate the firearm industry. (See *City of New York v. Beretta USA Corp.* (2nd Cir. 2008) 524 F.3d 384 and *Ileto v. Glock, Inc.* (9th Cir. 2009) 565 F.3d 1126.) This interpretation has resulted in dismissal of a number of suits that argue “applicable” should be broadly defined to include state laws such as public nuisance statutes that address endangerment of health and safety.

However, some state courts have adopted a broader interpretation of the predicate exception. For example, in a suit filed by the parents of the Sandy Hook victims against Remington Arms, the manufacturer of the rifle used to kill 26 people (20 of whom were children between six and seven years old) at Sandy Hook Elementary School, the Connecticut Supreme Court ruled that the defendants, by marketing the illegal use of their products, violated the Connecticut Unfair Trade Practices Act (CUTPA). (*Soto v. Bushmaster Firearms Int'l, LLC*. (Conn. 2019) 202 A.3d 262.) The court noted that, because deceptive marketing is regulated by unfair trade practice laws, rather than firearms-specific statutes, CUTPA is an applicable statute as specified in the predicate exception. In February of 2022, the plaintiffs announced that they reached a settlement with the company for \$73 million. The settlement allowed the plaintiffs to share internal company documents obtained during discovery that provide evidence of the company's unfair marketing practices promoting the illegal use of firearms.

***The bill appears to fall within an exception to PLCAA.*** As described above, the immunity provision of PLCAA generally shields gun manufacturers and dealers from liability in state or federal court for harm incurred due to the illegal use of non-defective products, except in limited cases. One exception reads as follows:

An action in which a manufacturer or seller of a firearm, ammunition, or components parts “***knowingly violated a State or Federal statute applicable to the sale or marketing of the product***, and the violation was a proximate cause of the harm for which relief is sought;”

The new liability provisions created by the bill govern the sale or marketing of firearm-related products. Therefore, to the extent that those laws would apply to a manufacturer or seller of a firearm, ammunition, or components parts, it appears that any violations, at least to the extent that they were “knowing” and the proximate cause of the harm for which relief is sought by a plaintiff, would appear to fall within the exception above. Therefore, it appears that PLCAA would not preempt an action under the bill to hold a manufacturer or dealer civilly liable for a violation of the bill's provisions.

***The bill does not appear to raise Second Amendment concerns.*** 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.” Prior to 2008, the right generally was understood by federal courts to be intertwined with military or militia use. (*See, e.g., Parker v. District of Columbia* (D. D.C. 2004) 311 F. Supp. 2d 103, pp. 104-05 [noting that the “vast majority of circuit courts . . . reject[ed] an individual right to bear arms separate and apart from Militia use”].) In *District of Columbia v. Heller*, the U.S. Supreme Court held that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, especially in one's home; and therefore the District of Columbia's functional ban on handgun possession in the home and its requirement that lawful firearms in the home be rendered inoperable were unconstitutional. (*District of Columbia v. Heller* (2008) 554 U.S. 570, 630-31.) Since *Heller*, the circuit courts largely have been applying a two-step inquiry to determine whether a particular law is constitutional. First, courts ask whether the challenged law burdens conduct protected by the Second Amendment. If it does not, the inquiry ends, as the law does not implicate the Second Amendment. But if the challenged law does burden conduct protected by the Second Amendment, courts next ask whether, under the applicable type of means-end scrutiny, the law is constitutional under that standard of review. (See Congressional Research Service, “*Post-Heller Second Amendment Jurisprudence*,” pp. 12-13 (March 25, 2019), available at <https://sgp.fas.org/crs/misc/R44618.pdf>.)

The Court in *Heller* observed that certain regulations restricting access to firearms were “longstanding” and “presumptively lawful,” including restrictions on possessing and selling certain types of weapons, and conditions on the commercial sale of firearms. (*Heller, supra*, 554 U.S. 570, 626-27 and fn.26.) Given that the civil liability provisions of this bill apply only to firearm *industry* members (defined under the bill to 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”) and are based upon longstanding and presumptively valid age restrictions in relation to the purchase and possession of firearms by children, the marketing and advertising restrictions in the bill likely do not implicate the Second Amendment. (See *United States v. Rene E.* (1<sup>st</sup> Cir. 2009) 583 F.3d 8, 15-16 [federal ban on juvenile possession of handguns fell within *Heller*’s safe harbor for longstanding restrictions on firearm possession].) Rather, the bill imposes liability only on these persons and entities who fail to abide by marketing and advertising restrictions that are consistent with those longstanding and presumptively valid age-based restrictions in the course of doing business.

***Are there other ways to achieve the bill’s goals that do not implicate the First Amendment?***

The author raises serious concerns about disturbing products – specifically child-sized firearms and other firearm-related products—that are designed, marketed, and advertised in a manner that is intended or reasonably does appeal to minors. What societal value is served by a child-sized assault-style rifle being available for purchase in the state, especially in comparison to the harm that potentially is caused by a child accessing that firearm? Shouldn’t the state reduce the likelihood of serious harm that could be caused to a child or others caused by a child accessing the firearm, given a child may be particularly motivated to obtain it (without supervision) because of its size color, or marketing directed to children in an unsafe and unsupervised manner? Would California ever allow a child-sized car, powerful enough to be driven at freeway speeds, to be sold in the state? Given that minors have neither a legal right under state law to possess or purchase such firearms, nor a Second Amendment right protected by the U.S. Constitution to do so, should California simply prohibit the sale of such firearms?

The state could advance its interest to keep these attractive [to children] yet deadly products out of the stream of commerce without suppressing otherwise lawful speech by prohibiting the sale for all firearms, regardless of their characteristics, if they are designed, intended for use, or marketed to appeal to children as their primary users. (See *Pitt News v. Pappert* (3d Cir. 2004) 379 F.3d 96, 108 [“[T]he Commonwealth can seek to combat underage and abusive drinking by other means that are far more direct and that do not affect the First Amendment. The most direct way to combat underage and abusive drinking by college students is the enforcement of the alcoholic beverage control laws on college campuses.”]; *Tracy Rifle & Pistol LLC v. Harris* (E.D. Cal. 2018) 339 F. Supp. 3d 1007, 1018 [finding a state law prohibiting the display of a handgun, an imitation handgun, or a placard advertising the sale of a handgun in a manner that is visible from the outside of a gun dealer’s premises unconstitutional].) “California has several laws that, if enforced, further its substantial interest in reducing handgun suicide and crime without restricting speech... [and] directly to deter the potential harmful consequences of handgun purchases without restricting speech.” (*Pitt News, supra*, at p. 108.) *As the bill moves forward, the author may wish to consider whether it would be appropriate to also, or alternatively, prohibit the sale of such firearms in California.*

**ARGUMENTS IN SUPPORT:** Everytown for Gun Safety, Moms Demand Action for Gun Sense in America, and Students Demand Action for Gun Sense in America write the following in a joint letter of support:

Current laws restrict the content and placement of advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors. This is done to prevent potentially harmful substances from getting in the hands of young people as well as preventing the glorification around them.

Our research shows that, “compared to other high-income countries, American children aged 5 to 14 are 21 times more likely to be killed with guns, and American adolescents and young adults aged 15 to 24 are 23 times more likely to be killed with guns.” In a county where young people already face a high likelihood of facing harm or death due to firearms it is imperative that we do not allow gun manufacturers to continue the glorification of firearms.

Regarding the comparison with restriction on advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors, the Brady Campaign and Brady California write, “While we certainly see the point of restricting ads around the previous products listed, unlike firearms none of these are a leading cause of death for children and teens.”

**ARGUMENTS IN OPPOSITION:** National Rifle Association of America Institute for Legislative Action writes:

[T]he restriction in AB 2571 fails to appreciate that minors can and do possess and use firearms for a variety of lawful purposes. The state interest asserted in AB 2571 is to combat the “proliferation of firearms to and among minors.” The bill also notes, “[t]his state has a compelling interest in ensuring that minors do not possess these dangerous weapons.” . . .

The legislation’s drafters justify their proposed regulation by citing restrictions on “advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors.” As noted in the discussion of *Lorillard Tobacco Co. v. Reilly*, such measures must be the narrowest means of achieving an asserted state interest – which was not the case in *Lorillard* and is not the case with AB 2571.

However, lawmakers should also understand that the restrictions cited as analogous to that in AB 2571 are of a fundamentally different character. Unlike restrictions on advertising for alcohol, cannabis, and tobacco, the underlying products and conduct that AB 2571 seeks to curb the advertisement of are protected under the U.S. Constitution. As such, lawmakers should be prepared for the courts to level more scrutiny upon restrictions on advertisements concerning Second Amendment protected products and conduct than those leveled at products that don’t enjoy such protection.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Brady Campaign  
Brady Campaign California  
City of Mountain View  
Everytown for Gun Safety Action Fund

March for Our Lives Action Fund  
Moms Demand Action for Gun Sense in America  
Students Demand Action for Gun Sense in America

**Opposition**

National Rifle Association - Institute for Legislative Action

**Concerns (with bill in print)**

California Broadcasters Association  
California News Publishers Association  
First Amendment Coalition

**Analysis Prepared by:** Alison Merrilees / JUD. / (916) 319-2334

# EXHIBIT 4



firearms. Additionally, section 7901 expresses the intent of Congress to preempt state laws to the contrary. (15 U.S.C. § 7901 (b)(6) and (7); Ileto v. Glock, Inc. (9th Cir. 2009) 565 F.3d 1126, 1129 (“Congress clearly intended the PLCAA to preempt common-law claims such as general tort theories of liability.”).) The PLCAA contains several exceptions including an action against a seller for negligent entrustment or negligence in general or an action where a manufacturer knowingly violates a state or federal law *applicable to the sale or marketing of a firearm*, and the violation was a proximate cause of the harm. Several federal courts have narrowly construed the phrase “state or federal law applicable to the sale or marketing of a firearm.” City of New York v. Beretta U.S.A. Corp. (2d Cir. 2008) 524 F.3d 384, 399-400 held the meaning of the term “applicable” must be determined in the context of the statute and the PLCAA provides several examples of where in existing law an applicable statute might apply: (a) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record related to the lawfulness of the sale required to be kept under federal or state law; and (b) any case in which the manufacturer or seller transferred or sold a firearm or ammunition knowing, or having reasonable cause to believe, that the actual buyer of was prohibited from possessing or receiving a firearm or ammunition.

Plaintiffs in the Sandy Hook Elementary School shooting case recently settled a multi-million dollar lawsuit against Bushmaster Firearms wherein the Connecticut Supreme Court ruled Bushmaster Firearms International violated Connecticut’s Unfair Trade Practices Act by engaging in deceptive advertising practices. The Connecticut Supreme Court found that state’s Unfair Trade Practices Act fell within the definition of a state law “applicable to the sale or marketing of a firearm” and, for this reason, denied Bushmaster’s attempt to dismiss the case. This case settled and will not be appealed.

The liability provisions in this bill govern the sale or marketing of firearm-related products. To the extent those laws apply to a manufacturer or seller of firearm, ammunition, or components parts, it appears that any violations, at least to the extent that they were “knowing” and the proximate cause of the harm for which relief is sought by a plaintiff, would appear to fall within the PLCAA exception. Therefore, it appears that PLCAA would not preempt an action under the bill to hold a manufacturer or dealer civilly liable for a violation of the bill’s provisions.

3) **Argument in Support.** According to the Brady United Against Gun Violence:

Current laws restrict the content and placement of advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors. This is done to prevent potentially harmful substances from getting in the hands of young people as well as preventing the glorification around them. While we certainly see the point of restricting ads around the previous products listed, unlike firearms none of these are a leading cause of death for children and teens.

4) **Argument in Opposition.** The National Rifle Association, Institute for Legislative Action:

[The] restriction in AB 2571 fails to appreciate that minors can and do possess and use firearms for a variety of lawful purposes. The



state interest asserted in AB 2571 is to combat the “proliferation of firearms to and among minors.” The bill also notes, “[t]his state has a compelling interest in ensuring that minors do not possess these dangerous weapons.” The asserted interest is not necessarily to discourage illegal use of firearms by minors, but rather all use.

- 5) **Related Legislation.** AB 1594 (Ting) authorizes the DOJ, local governments and survivors of gun violence to file a civil action in a California court for damages against a gun manufacturer, importer or dealer that violates firearm industry standards of conduct, as specified.

**Analysis Prepared by:** Kimberly Horiuchi / APPR. / (916) 319-2081

# EXHIBIT 5

ASSEMBLY THIRD READING  
AB 2571 (Bauer-Kahan and Gipson)  
As Amended April 27, 2022  
Majority vote

## SUMMARY

Prohibits firearm industry members from marketing or advertising firearm-related products to minors and authorizes public attorneys and injured plaintiffs to bring a civil action to enforce the prohibition, obtain injunctive relief, and seek either civil penalties, or, in some cases, damages for harms caused by a violation.

### Major Provisions

- 1) Provides that a firearm industry member shall not advertise, market, or arrange for placement of an advertising or marketing communication concerning any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.
- 2) Requires a court, in determining whether marketing or advertising of a firearm-related product is attractive to minors, to consider the totality of the circumstances, including, but not limited to, whether the marketing or advertising:
  - a) Uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products.
  - b) Offers brand name merchandise for minors, including but not limited to, hats, t-shirts or other clothing, toys, games, stuffed animals, that promotes a firearm industry member or firearm-related product.
  - c) Offers firearm-related products in sizes, colors or designs that are specifically designed to be used by, or appeal to, minors.
  - d) Is part of a marketing or advertising campaign designed with the intent to appeal to minors.
  - e) Uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products.
  - f) Is placed in a publication created for the purpose of reaching an audience that is predominately comprised of minors and not intended for a more general audience comprised of adults.
- 3) Prohibits a firearm industry member from publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, and from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product.
- 4) Provides that any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed \$25,000 for each violation, which shall be assessed and recovered in a

civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

- 5) Allows a person harmed by a violation of the bill to commence a civil action to recover their
- 6) Provides that upon a motion, a court shall award reasonable attorney's fees and costs, including expert witness fees and other litigation expenses, to a plaintiff who is a prevailing

## COMMENTS

This bill prohibits a firearm industry member from advertising, marketing, or arranging for placement any advertising or marketing communication concerning a firearm-related product when the communication is designed, intended, or reasonably appears to make the firearm-related product attractive to minors. The bill then requires a court, in determining whether the marketing or advertising communication makes the firearm-related product attractive to minors, to consider "the totality of the circumstances," including but not limited to whether the marketing or advertising does any of the following:

- 1) Uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products.
- 2) Offers brand name merchandise for minors, including but not limited to, hats, t-shirts or other clothing, toys, games, stuffed animals, that promotes a firearm industry member or firearm-related product.
- 3) Offers firearm-related products in sizes, colors or designs that are specifically designed to be used by, or appeal to, minors.
- 4) Is part of a marketing or advertising campaign designed with the intent to appeal to minors.
- 5) Uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products.
- 6) Is placed in a publication created for the purpose of reaching an audience that is predominately comprised of minors and not intended for a more general audience comprised of adults.

*Remedies for violations.* This bill authorizes two types of civil actions to enforce compliance with its provisions. First the Attorney General or any district attorney, county counsel, or city attorney would be authorized to bring a civil action in any court of competent jurisdiction in the name of the people of the State, county, or city, as appropriate, to seek a civil penalty. Any person found in such an action to have violated any provision of the bill would be liable for a civil penalty not to exceed \$25,000 for each violation. This bill specifies a number of factors that courts should rely upon in evaluating whether or not to impose the maximum \$25,000 civil penalty: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

*The bill restricts some marketing and advertising of firearms, raising potential First Amendment concerns.* This bill focuses on advertising and marketing materials that are promulgated by a narrowly defined group of commercial speakers – the firearm industry – rather than on publishers, or even advertisers, in general. Given that these are the only groups that generally engage in this type of commercial speech, the means used by the bill seem narrowly tailored to address the source of the harmful marketing and advertising content, rather than focused on its dissemination. Furthermore, the type of advertising and marketing at issue in this bill is not generally directed towards lawful purchasers of firearms (i.e. adults); rather, they are specifically designed to appeal to, and be directed at, children. Therefore, denying this form of advertising and marketing does not significantly impact a protected interest that firearm industry members have to furnish truthful information to would-be lawful purchasers who have a corresponding interest in receiving such information. (See *Discount Tobacco City & Lottery, Inc. v. United States* (6th Cir. 2012) 674 F.3d 509, 520.) With the findings incorporated into this bill – that firearms marketing and advertising contributes to the unlawful sale of firearms to minors, as well as the unlawful transfer of firearms to minors by adults who may possess those weapons lawfully – the bill seems substantially related to the achievement of its objective.

#### **According to the Author**

Some firearms manufacturers irresponsibly market weapons to children. For example, Wee 1 Tactical has begun marketing an AR-15 made specifically for children. They currently market the weapon, called a JR-15, with a cartoon skull-and-crossbones with a pacifier. . . . Under current law, the company would be able to market this weapon in California, as long as it does so off-line, e.g., in a magazine advertisement.

This legislation would restrict the marketing and advertising of firearms to minors in all media. Specifically, this bill would prohibit [a firearm industry member] . . . from marketing or advertising firearms, ammunition, or reloaded ammunition to minors.

#### **Arguments in Support**

According to the Brady United Against Gun Violence:

Current laws restrict the content and placement of advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors. This is done to prevent potentially harmful substances from getting in the hands of young people as well as preventing the glorification around them. While we certainly see the point of restricting ads around the previous products listed, unlike firearms none of these are a leading cause of death for children and teens.

#### **Arguments in Opposition**

The National Rifle Association, Institute for Legislative Action:

[The] restriction in AB 2571 fails to appreciate that minors can and do possess and use firearms for a variety of lawful purposes. The state interest asserted in AB 2571 is to combat the "proliferation of firearms to and among minors." The bill also notes, "[t]his state has a compelling interest in ensuring that minors do not possess these dangerous weapons." The asserted interest is not necessarily to discourage illegal use of firearms by minors, but rather all use.

**FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) Cost pressures (Trial Court Trust Fund) in the mid-hundreds of thousands of dollars for trial courts to hear and adjudicate civil actions against a firearms industry member that markets or advertises to minors. If five cases are filed in civil court annually requiring seven to ten days or 56 to 80 hours of court time, at an average cost per hour of \$1,000 in workload costs, the cost to the trial courts would be between \$280,000 and \$400,000 annually. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties.
- 2) Costs (GF) of \$442,000 in fiscal year (FY) 2022-23, \$776,000 in FYs 2023-24 and 2024-25 and \$388,000 annually thereafter in additional legal staff for the DOJ to prosecute firearm industry members for unlawful advertisements to minors.

**VOTES**

**ASM PRIVACY AND CONSUMER PROTECTION: 7-1-3**

**YES:** Gabriel, Bauer-Kahan, Bennett, Berman, Mike Fong, Irwin, Wilson

**NO:** Kiley

**ABS, ABST OR NV:** Cunningham, Valladares, Wicks

**ASM JUDICIARY: 7-2-1**

**YES:** Stone, Kalra, Maienschein, Reyes, Robert Rivas, Friedman, Bloom

**NO:** Davies, Kiley

**ABS, ABST OR NV:** Cunningham

**ASM APPROPRIATIONS: 12-4-0**

**YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**NO:** Bigelow, Megan Dahle, Davies, Fong

**UPDATED**

VERSION: April 27, 2022

CONSULTANT: Nichole Rocha / P. & C.P. / (916) 319-2200

FN: 0002582

# EXHIBIT 6

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 2571 (Bauer-Kahan)  
Version: April 27, 2022  
Hearing Date: June 14, 2022  
Fiscal: Yes  
Urgency: No  
CK

**SUBJECT**

Firearms: advertising to minors

**DIGEST**

This bill prohibits firearm industry members from advertising or marketing, as defined, firearm-related products to minors. The bill restricts the use of minors' personal information in connection with marketing or advertising firearm-related products to those minors.

**EXECUTIVE SUMMARY**

In the United States, children are more likely to die from gun violence than in any other high-income country. In 2020, gun violence overtook car accidents to become the number one cause of death for U.S. children and adolescents.<sup>1</sup> In California, children are generally restricted from purchasing and possessing firearms and ammunition, except under specified circumstances. However, concerns have arisen that children are still being marketed to by the gun industry.

This bill prohibits firearm industry members from advertising or marketing, as defined, firearm-related products in a manner that is designed, intended, or reasonably appears to be attractive to minors. The determination of whether it is "attractive to minors" is based on a consideration of the totality of the circumstances, including whether the marketing or advertising used cartoon characters or offered brand name stuffed animals promoting the entity or firearm-related product. The bill also prohibits knowingly leveraging the personal information of a minor for the purpose of marketing or advertising to that minor any firearm-related product, as specified.

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<sup>1</sup> Laurel Wamsley, *The U.S. is uniquely terrible at protecting children from gun violence* (May 28, 2022) NPR, <https://www.npr.org/2022/05/28/1101307932/texas-shooting-ualde-gun-violence-children-teenagers>. All internet citations are current as of June 2, 2022.



AB 2571 (Bauer-Kahan)  
Page 2 of 16

This bill is sponsored by Governor Gavin Newsom. It is supported by a variety of groups, including Everytown for Gun Safety and the County of San Diego. The bill is opposed by the National Rifle Association.

### **PROPOSED CHANGES TO THE LAW**

Existing federal law:

- 1) Provides, pursuant to the Second Amendment to the United States Constitution, that 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. (U.S. Const. Amend. 2.)
- 2) Prohibits a qualified civil liability action from being brought in any Federal or State court. (15 U.S.C. § 7902.) A “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. (15 U.S.C. § 7903.)
- 3) Establishes the federal Children’s Online Privacy Protection Act (COPPA) to provide protections and regulations regarding the collection of personal information from children under the age of 13. (15 U.S.C. § 6501 et seq.)

Existing state law:

- 1) Requires a person be at least 18 years of age to be sold most firearms and at least 21 years of age to be sold a handgun, except as specified. (Pen. Code §§ 27505, 27510.)
- 2) Establishes the Privacy Rights for California Minors in the Digital World (PRCMDW), which prohibits an operator of an internet website, online service, online application, or mobile application (“operator”) from the following:
  - a) marketing or advertising specified products or services, such as firearms, cigarettes, and alcoholic beverages, on its internet website, online service, online application, or mobile application that is directed to minors;
  - b) marketing or advertising such products or services to minors who the operator has actual knowledge are using its site, service, or application online and is a minor, if the marketing or advertising is specifically directed to that minor based upon the personal information of the minor;and

AB 2571 (Bauer-Kahan)

Page 3 of 16

- c) knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of a minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising such products or services to that minor, where the website, service, or application is directed to minors or there is actual knowledge that a minor is using the website, service, or application. (Bus. & Prof. Code § 22580.)
- 3) Requires, pursuant to the PRCMDW, certain operators to permit a minor user to remove the minor's content or information and to further inform the minor of this right and the process for exercising it. (Bus. & Prof. Code § 22581.)
- 4) Requires, pursuant to the Parent's Accountability and Child Protection Act, a person or business that conducts business in California, and that seeks to sell any product or service in or into California that is illegal under state law to sell to a minor to, notwithstanding any general term or condition, take reasonable steps, as specified, to ensure that the purchaser is of legal age at the time of purchase or delivery, including, but not limited to, verifying the age of the purchaser. (Civ. Code § 1798.99.1(a)(1).)
- 5) Prohibits a business from selling or sharing the personal information of a consumer if the business has actual knowledge that the consumer is less than 16 years of age unless the consumer, in the case of consumers between 13 and 16 years of age, or the consumer's parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized such sale or sharing. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. (Civ. Code § 1798.120.)
- 6) Defines "firearm" as 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. (Pen. Code § 16520.) It defines "firearm precursor part" to mean a component of a firearm that is necessary to build or assemble a firearm and is either an unfinished receiver or an unfinished handgun frame. (Pen. Code § 16531.)
- 7) Defines "ammunition" to include any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding device, or projectile capable of being fired from a firearm with a deadly consequence. (Pen. Code § 16150(b).)
- 8) Requires firearms dealers to obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer, to the DOJ to perform a background check on the purchaser to determine whether they are prohibited from possessing a firearm. (Pen. Code §§ 28160-28220.)

AB 2571 (Bauer-Kahan)

Page 4 of 16

This bill:

- 1) Prohibits a firearm industry member from advertising, marketing, or arranging for placement of an advertising or marketing communication concerning any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.
- 2) Defines “firearm industry member” to include any of the following:
  - a) any person or entity engaged in the manufacture, distribution, importation, marketing, wholesale, or retail sale of firearm-related products; or
  - b) any person or entity formed for the express purpose of promoting, encouraging, or advocating for the purchase, use, or ownership of firearm-related products that endorses or advertises such products, or advertises, sponsors, or promotes events where they are sold or used.
- 3) Requires a court when determining whether marketing or advertising of a firearm-related product is attractive to minors to consider the totality of the circumstances, including, but not limited to, whether the marketing or advertising:
  - a) uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products;
  - b) offers brand name merchandise for minors, including, but not limited to, hats, t-shirts, or other clothing, or toys, games, or stuffed animals that promotes a firearm industry member or firearm-related product;
  - c) offers firearm-related products in sizes, colors, or designs that are specifically designed to be used by, or appeal to, minors;
  - d) is part of a marketing or advertising campaign designed with the intent to appeal to minors;
  - e) uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products; or
  - f) is placed in a publication created for the purpose of reaching an audience that is predominately composed of minors and not intended for a more general audience composed of adults.
- 4) Prohibits a firearm industry member publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product.
- 5) Provides that any person in violation is liable for a civil penalty not to exceed \$25,000 for each violation, which shall be assessed and recovered in a civil action

AB 2571 (Bauer-Kahan)

Page 5 of 16

brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

- 6) Authorizes a person harmed by a violation to commence a civil action to recover their actual damages.
- 7) Authorizes the court to order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct.
- 8) Entitles a prevailing plaintiff to reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.
- 9) Deems each copy or republication of prohibited marketing or advertising a separate violation.
- 10) Defines "firearm-related product" as a firearm, ammunition, reloaded ammunition, a firearm precursor part, a firearm component, or a firearm accessory that has a specified connection to California.

### COMMENTS

#### 1. Children and the epidemic of gun violence in the United States

Gun violence in the United States has surged in recent years. While most shooting deaths involve handguns, there has been a dramatic rise in the use of assault weapons in gun massacres with six or more deaths, owing to their ability to inflict greater damage at a quicker rate.<sup>2</sup> Research shows that laws restricting assault weapons reduce deaths; estimates find mass-shooting fatalities were 70 percent less likely during the period when the federal ban was in effect.<sup>3</sup> Another rising scourge is the prevalence of "ghost guns." In 2020, California accounted for 65 percent of all ghost guns seized by

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<sup>2</sup> Emily Shapiro, *The type of gun used in most US homicides is not an AR-15* (October 26, 2021) ABC News, <https://abcnews.go.com/US/type-gun-us-homicides-ar-15/story?id=78689504>. All internet citations are current as of March 22, 2022.

<sup>3</sup> Charles DiMaggio, et al., *Changes in US mass shooting deaths associated with the 1994-2004 federal assault weapons ban: Analysis of open-source data* (January 2019) *The Journal of Trauma and Acute Care Surgery*, <https://doi.org/10.1097/TA.0000000000002060>.

AB 2571 (Bauer-Kahan)

Page 6 of 16

the Bureau of Alcohol, Tobacco, Firearms and Explosives.<sup>4</sup> The weapons have been linked to 24 killings and dozens of other crimes in 2020 in Los Angeles alone. The problem of gun violence in our society is not going away. In 2020, over 45,000 Americans died from gun-related injuries in the United States. This is the most on record by far, a 43 percent increase from a decade prior.

As stated, gun violence has now become a leading cause of death of children in this country. This is a problem that is increasingly involving children from an early age:

On May 24th an 18-year-old gunman, Salvador Ramos, walked into an elementary school in Uvalde, a town in south-west Texas, and shot dead at least 21 people, including 19 children. Mr Ramos was himself killed, reportedly by police. His motive remains unclear. It is the latest in a spate of mass shootings in America, and the toll is the biggest at a school since a gunman killed 26 people at Sandy Hook Elementary in Newtown, Connecticut, in 2012.

In the decade since Sandy Hook there have been over 900 shootings on school grounds in America. After more than 60 years in which motor-vehicle crashes were the leading cause of death for young people, since 2017 guns have killed more Americans between the ages of one and 24. In 2020 more than 10,000 young Americans were killed by firearms, up from just under 7,000 two decades earlier. Pupils at almost all schools take part in active-shooter drills, learning to hide beneath their desks. Some drills use pellet guns and fake blood to simulate an attack.<sup>5</sup>

Not only are children increasingly the victims, but also the perpetrators of school shootings:

In cases where the source of the gun could be determined, more than 85 percent of shooters brought them from their own homes or obtained them from friends or relatives, according to The Post's analysis.

The ranks of school shooters include a 6-year-old boy, who killed a classmate after saying he didn't like her, and a 15-year-old girl, who did the same to a friend for rejecting her romantic overtures.

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<sup>4</sup> Justin Ray, 'An instrument of death': The problem of ghost guns in California (November 15, 2021) Los Angeles Times, <https://www.latimes.com/california/newsletter/2021-11-15/ghost-guns-california-essential-california>.

<sup>5</sup> *Guns are the things most likely to kill young people in America* (May 25, 2022) The Economist, <https://www.economist.com/graphic-detail/2022/05/25/guns-are-the-things-most-likely-to-kill-young-people-in-america>.

AB 2571 (Bauer-Kahan)  
Page 7 of 16

Seven in 10 of them, however, were under the age of 18, which means that – often because of an adult’s negligence – dozens of children had access to deadly weapons.

**The median age of school shooters is 16.<sup>6</sup>**

This is borne out in other studies as well. According to an analysis of FBI data, in 29 of 62 active shooting incidents at educational facilities in the United States between 2000 and 2019, the offender was younger than 18, with an additional 10 shooters between 18 and 21 years old.<sup>7</sup> Another federally-run center database shows “at least 59 percent of the 2,275 school shootings researchers recorded since 1970 were committed by someone under 21 years old. The offender’s age is unknown in another 18 percent of incidents.”<sup>8</sup>

2. Targeting children with firearm-related products

This bill is prompted by the incidence of marketing and advertising of firearm-related products to children, arguably seeking to attract future legal gun owners. A report from the Violence Policy Center (VPC) outlines the problem:

The gun industry has long understood that it faces a slow-motion demographic collapse. With the industry’s customer base growing older, household gun ownership in America has steadily declined. As its primary market of white males ages and dies off, the firearms industry has set its sights on America’s children. Much like the tobacco industry’s search for replacement smokers, the gun industry is seeking replacement shooters to purchase its deadly products. Firearms companies have teamed up with “corporate partners” like the National Rifle Association of America, the gun industry’s trade association the National Shooting Sports Foundation (NSSF), and online publications such as Junior Shooters in an industry-wide effort to market firearms to kids. They do this by promoting websites and magazines targeted at children, designing “kid-friendly” guns to appeal to the youth market, and even working to create the equivalent of “reality” video” games to encourage gun use from an early age.

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<sup>6</sup> John Woodrow Cox, et al., *More than 311,000 students have experienced gun violence at school since Columbine* (May 27, 2022) Washington Post,

<https://www.washingtonpost.com/graphics/2018/local/school-shootings-database/>.

<sup>7</sup> Mary Katherine Wildeman, *Data show most school shootings carried out by young adults, teens* (May 26, 2022) CT Insider, <https://www.ctinsider.com/news/article/Data-show-most-school-shootings-carried-out-by-17199231.php>.

<sup>8</sup> *Ibid.*

AB 2571 (Bauer-Kahan)

Page 8 of 16

The industry's focus on recruiting children into the gun culture has been acknowledged since at least the 1990s.<sup>9</sup>

One particularly acute example is a product marketed by WEE1 Tactical:

A US gun manufacturer has unveiled a semi-automatic rifle for kids modeled on the AR-15, which has been used in a number of deadly mass shootings, sparking condemnation from gun safety groups.

The gun dubbed the JR-15 is being marketed by maker WEE1 Tactical as "the first in a line of shooting platforms that will safely help adults introduce children to the shooting sports."

The company's website says the rifle "also looks, feels, and operates just like Mom and Dad's gun."

The JR-15 is only 31 inches (80 centimeters) long, weighs less than 2.5 pounds (one kilogram) and comes with magazines of five or 10 rounds of 22 caliber bullets. It was released in mid-January with a price tag of \$389.

The adult model, the AR-15, is the civilian version of a military-style weapon and has been used in multiple mass killings in the United States, including in schools.<sup>10</sup>

The marketing generally includes more compact models that are lighter to handle or firearms in various colors. A New York Times blog synthesizes the VPC report:

The gun industry markets a variety of products explicitly to children, a new report shows, from armed stuffed animals to lighter versions of rifles. And some see kids as a vital group of future gun buyers who need to be brought into the fold at a young age.

The report, called "Start Them Young" and issued on Thursday by the Violence Policy Center, lists a variety of firearms meant at least partly for children. It mentions the Crickett rifle, a gun made for children by the company Keystone Sporting Arms. Keystone's website and some of its merchandise bear the image of "Davey Crickett," a gun-wielding cartoon insect. The company sells Davey Crickett hats, dog tags and pins, as well as a Davey Crickett Beanie Baby, listed as "not for children under three years of age."

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<sup>9</sup> Josh Sugarmann, "Start Them Young" *How the Firearms Industry and Gun Lobby Are Targeting Your Children* (February 2016) VPC, <https://www.vpc.org/studies/starttheyoung.pdf>.

<sup>10</sup> Agence France Presse, *US Gunmaker Unveils Semi-automatic Rifle Marketed To Kids* (February 18, 2022) Barron's, <https://www.barrons.com/articles/top-gun-movie-business-51654023576>.

AB 2571 (Bauer-Kahan)

Page 9 of 16

Keystone’s website also sells books featuring “Little Jake,” a boy who uses his gun to bring down a bear and save an African village from a marauding elephant. The publisher of the books says Little Jake is actually older than he looks: “Little Jake is a fictional character in his late teens. While small in stature so that young children may relate to him, Little Jake is old enough to hunt and fish safely on his own without adult supervision.”

“Start Them Young” also cites the rise of .22-caliber versions of higher-caliber rifles, often produced with lightweight materials. According to an article in the trade magazine *Shooting Sports Retailer*, “these guns bring the coolness and fun of the tactical rifle to kids and less serious shooters.”<sup>11</sup>

According to the author:

In 2021 there were approximately 259 unintentional shootings by children, resulting in 104 deaths and 168 injuries. Weapons used by children have put other children at risk. 91% of the victims in these shootings by children were also under 18, often siblings of the children shooting. In California, gun violence is the third-leading cause of death for children and teens. This epidemic of deadly violence is fueled by an industry that encourages children to hold a gun as soon as they can walk.

Gun manufacturers view children as their next generation of advocates and customers, and target them with slick advertising – even children’s books. The advertising for these weapons is shameless. Children in California are not allowed to buy or own a gun, yet they are advertised to across all forms of media with cartoons, video games, and social media.

AB 2571 will prohibit a person or entity from publishing materials that advertise or market firearms or weapons to anyone under the age of 18. This bill would allow the Attorney General, a District or County Attorney, or a County Counsel to bring a civil action against each violation up to \$25,000.

Guns are not a toy. Guns are a tool of death. Taking away this tool of violent indoctrination from the gun industry is a vital step forward to protect California’s children.

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<sup>11</sup> Anna North, *Marketing Guns to Children* (February 19, 2022) *The New York Times*, <https://takingnote.blogs.nytimes.com/2016/02/19/marketing-guns-to-children>.



AB 2571 (Bauer-Kahan)  
Page 10 of 16

3. Prohibiting the marketing or advertising of such products to children

This bill prohibits a firearm industry member from advertising or marketing any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors. Furthermore, the bill places limitations on how these entities can utilize the personal information of minors in this context. If they are publishing material directed to minors in California or have actual knowledge that a minor is using or receiving its material, they are prohibited from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product.

Violations of these provisions are subject to civil penalties of up to \$25,000 for each violation in civil actions brought by the Attorney General or by any district attorney, county counsel, or city attorney. Each copy or republication of prohibited marketing or advertising is deemed a separate violation. Courts are provided specific factors to consider in setting the amount of the penalty including the nature, seriousness, and willfulness of the defendant's misconduct and the defendant's assets, liabilities, and net worth.

An individual harmed by a violation is also authorized to bring suit to recover their actual damages. This would require the individual to establish the causal connection between the violation and their damages.

In addition to the remedies above, the court can order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct. A prevailing plaintiff is entitled to reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.

The bill also provides some direction to courts in determining whether marketing or advertising of a firearm-related product is attractive to minors. They are to consider the totality of the circumstances, including whether the marketing or advertising:

- uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products;
- offers brand name merchandise for minors, including, but not limited to, hats, t-shirts, or other clothing, or toys, games, or stuffed animals that promotes a firearm industry member or firearm-related product;
- offers firearm-related products in sizes, colors, or designs that are specifically designed to be used by, or appeal to, minors;
- is part of a marketing or advertising campaign designed with the intent to appeal to minors;

AB 2571 (Bauer-Kahan)

Page 11 of 16

- uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products; or
- is placed in a publication created for the purpose of reaching an audience that is predominately composed of minors and not intended for a more general audience composed of adults.

#### 4. Concerns raised with the bill

Some concerns have been raised about the bill's constitutionality, namely whether it violates the First Amendment. The prohibitions in this bill restrict the commercial speech of the firearm industry members, but the mere fact that it restricts speech does not mean that such a restriction would violate the First Amendment of the United States Constitution or Article I of the California Constitution.

Generally speaking, the First Amendment and Article I of the California Constitution, act to protect the freedom of expression of the citizens of California. Commercial speech, which is done on behalf of a company or individual for purpose of making a profit, is protected under the state and federal guarantees of free speech, but to a lesser degree than noncommercial speech.<sup>12</sup> A blanket prohibition against truthful, nonmisleading speech about a lawful product, which serves an end unrelated to consumer protection, must be reviewed with skepticism. A "state legislature does not have the broad discretion to suppress truthful, nonmisleading information for paternalistic purposes[.]" (44 *Liquormart, Inc. v. Rhode Island* (1996) 517 U.S. 484, 510.) Ultimately, the First Amendment protects commercial speech against "unwarranted" governmental regulation.

In order to be upheld as a valid restriction on commercial speech, the proposed law must meet the following four-part test: (1) the speech must be about a lawful activity and cannot be false or misleading; (2) the government must have a substantial interest; (3) the law must directly advance the governmental interest asserted; and (4) the law must be no more extensive than necessary. (*Central Hudson Gas v. Public Service Commission* (1980) 447 U.S. 559.)

In this case, the proposed restriction is arguably about restricting the marketing of products to children that are not generally legally able to buy them. California law generally prohibits minors from possessing a handgun and most semi-automatic rifles, as well as ammunition. The possibility and even likelihood that marketing or advertising of firearm-related products that makes those products attractive to children who, in most cases, cannot lawfully possess them, greatly strengthens the argument that the bill's restrictions on the marketing and advertising of firearm-related products could withstand constitutional scrutiny. Even if the speech is lawful, the State of California arguably has a strong interest in taking steps to prevent firearms from being

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<sup>12</sup> See *Gerawan Farming, Inc. v. Lyons* (2004) 33 Cal.4th 1, 22.

AB 2571 (Bauer-Kahan)  
Page 12 of 16

sold to minors, and the proposed law advances that interest in a manner that does not cover products or advertisements directed to lawful purchasers. Based on the findings incorporated into the bill that firearms marketing and advertising contributes to the unlawful sale of firearms to minors, as well as the unlawful transfer of firearms to minors by adults who may possess those weapons lawfully, the bill is arguably substantially related to the achievement of its objective. Although a determination regarding the First Amendment is ultimately for the courts, arguably the proposed restriction on marketing and advertising could survive such a challenge.

Similar laws already exist that restrict the advertising of other products to children. For instance, coin banks, toys, balloons, magic tricks, miniature bottles or cans, confections, dolls, or other items that appeal to minors or underage drinkers may not be used in connection with the merchandising of beer. (Bus. & Prof. Code § 25600.) Similarly, edible cannabis products cannot be designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis. (Bus. & Prof. Code § 26130.)

Another particularly relevant example is the Privacy Rights for California Minors in the Digital World, which prohibits an operator of an internet website, online service, online application, or mobile application (“operator”) from the following:

- marketing or advertising specified products or services such as firearms, cigarettes, and alcoholic beverages on its internet website, online service, online application, or mobile application that is directed to minors;
- marketing or advertising such products or services to minors who the operator has actual knowledge are using its site, service, or application online and is a minor, if the marketing or advertising is specifically directed to that minor based upon the personal information of the minor; and
- knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of a minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising such products or services to that minor, where the website, service, or application is directed to minors or there is actual knowledge that a minor is using the website, service, or application. (Bus. & Prof. Code § 22580.)

As can be seen, the language of this bill borrows from these existing statutes.

Writing in opposition, the National Rifle Association argues the bill will not withstand constitutional challenge:

Even if one is to assume that AB 2571 meets the first three criteria of the test set forth in *Central Hudson*, the regulation fails the fourth part of the test. A minor may find a piece of advertising attractive for the same reasons as an adult. Adults and minors often use firearms for the same lawful purposes, prize the same characteristics in firearms, and therefore

AB 2571 (Bauer-Kahan)

Page 13 of 16

would be attracted to the same advertising materials. As AB 2571 would target advertising valued by both minors and adults it would necessarily “impinge on the speaker's ability to propose a commercial transaction and the adult listener's opportunity to obtain information about products.”

Moreover, the restriction in AB 2571 fails to appreciate that minors can and do possess and use firearms for a variety of lawful purposes. The state interest asserted in AB 2571 is to combat the “proliferation of firearms to and among minors.” The bill also notes, “[t]his state has a compelling interest in ensuring that minors do not possess these dangerous weapons.” The asserted interest is not necessarily to discourage illegal use of firearms by minors, but rather all use.

First, as minors are permitted by state law to use firearms for a variety of lawful purposes, it is dubious that the state’s asserted interest in AB 2571 of preventing firearm use by minors is “substantial,” as required by the second part of the *Central Hudson* test.

Second, if it is the drafters of AB 2571’s goal to curb the illegal use of firearms by minors, a less suspect state interest, surely banning all advertising that may be attractive to minors, even that contemplating the use of firearms for lawful purposes, would be overbroad under part four of the *Central Hudson* test.

The legislation’s drafters justify their proposed regulation by citing restrictions on “advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors.” As noted in the discussion of *Lorillard Tobacco Co. v. Reilly*, such measures must be the narrowest means of achieving an asserted state interest – which was not the case in *Lorillard* and is not the case with AB 2571.

However, lawmakers should also understand that the restrictions cited as analogous to that in AB 2571 are of a fundamentally different character. Unlike restrictions on advertising for alcohol, cannabis, and tobacco, the underlying products and conduct that AB 2571 seeks to curb the advertisement of are protected under the U.S. Constitution. As such, lawmakers should be prepared for the courts to level more scrutiny upon restrictions on advertisements concerning Second Amendment protected products and conduct than those leveled at products that don’t enjoy such protection.

One additional, potential legal barrier to the bill, is the federal Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA prohibits a qualified civil liability action from being brought in any federal or state court. (15 U.S.C. § 7902.) A “qualified civil

AB 2571 (Bauer-Kahan)  
Page 14 of 16

liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. (15 U.S.C. § 7903.) These statutes stand to preempt state laws that impose liability on manufacturers, sellers, and trade associations for the misuse of firearms by third parties.

However, there are exceptions to the PLCAA’s preemptive effect. Specifically, the federal law explicitly does not preempt “an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.” (15 U.S.C. § 7903.) Given that liability attaches in this bill for the direct conduct of firearm industry members themselves, namely their advertising, marketing, or use of minors’ personal information, and is not triggered solely by the misconduct of another party, the bill should arguably not be found to be preempted.

#### 5. Stakeholder support

Brady California and the Brady Campaign to Prevent Gun Violence write in support of this measure:

Current laws restrict the content and placement of advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors. This is done to prevent potentially harmful substances from getting in the hands of young people as well as preventing the glorification around them. While we certainly see the point of restricting ads around the previous products listed, unlike firearms none of these are a leading cause of death for children and teens.

Writing in support, the City of Mountain View argues the bill provides “another tool in the tool belt of municipalities to counter dangerous practices that jeopardize the health and wellness of our communities.”

The County of San Diego writes in support of this bill, and gun legislation in general:

The County of San Diego recognizes action must be taken to prevent unintentional shootings and reduce the risk of homicides and decrease access to guns used in crimes.

State legislation that addresses gun violence will help hold the gun industry accountable through private lawsuits and by prohibiting the advertisement of certain categories of weapons. The County of San Diego

AB 2571 (Bauer-Kahan)  
Page 15 of 16

supports these and other efforts that would allow for new oversight and accountability measures for the gun industry.

### SUPPORT

Governor Gavin Newsom (sponsor)  
Brady California  
Brady Campaign to Prevent Gun Violence  
City of Mountain View  
County of San Diego  
Everytown for Gun Safety  
March for Our Lives  
Moms Demand Action for Gun Sense in America  
Students Demand Action for Gun Sense in America

### OPPOSITION

National Rifle Association

### RELATED LEGISLATION

#### Pending Legislation:

SB 1327 (Hertzberg, 2022) establishes privately-enforced civil causes of action against any person who manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any firearm lacking a required serial number, assault weapon, .50 BMG rifle, or firearm precursor part, as specified. This bill is currently in the Assembly Judiciary Committee.

AB 452 (Friedman, 2022) requires local educational agencies to inform parents, through a notice, of California's child access prevention laws and other firearm laws. This bill is currently in the Senate Appropriations Committee.

AB 1594 (Ting, 2022) establishes a firearm industry standard of conduct, which would require a firearm industry member, as defined, to, among other things, establish, implement, and enforce reasonable controls, as defined, and adhere to specified laws pertaining to unfair methods of competition, unfair or deceptive acts or practices, or false advertising. The bill also prohibits 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 is currently in this Committee and will be heard on the same day as this bill.

AB 2571 (Bauer-Kahan)  
Page 16 of 16

AB 1621 (Gipson, 2022), among other things, prohibits the sale, transfer, or possession of an unserialized firearm precursor part, except as specified, and explicitly prohibits the possession or transfer of a firearm without a serial number or mark of identification. This bill is currently in the Senate Public Safety Committee.

Prior Legislation: SB 568 (Steinberg, Ch. 336, Stats. 2013) established the Privacy Rights for California Minors in the Digital World.

**PRIOR VOTES:**

Assembly Floor (Ayes 48, Noes 16)  
Assembly Appropriations Committee (Ayes 12, Noes 4)  
Assembly Judiciary Committee (Ayes 7, Noes 2)  
Assembly Privacy and Consumer Protection Committee (Ayes 7, Noes 1)

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# EXHIBIT 7



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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### AB 2571 (Bauer-Kahan) - Firearms: advertising to minors

**Version:** June 15, 2022

**Urgency:** Yes

**Hearing Date:** June 16, 2022

**Policy Vote:**

**Mandate:** No

**Consultant:** Matthew Fleming

**Bill Summary:** AB 2571, an urgency measure, would prohibit firearm industry members from advertising or marketing firearm-related products to minors.

#### Fiscal Impact:

- DOJ: The Department of Justice DOJ reports costs of \$442,000 in Fiscal Year (FY) 2022-23, \$776,000 in F 2023-24, \$776,000 in FY 2024-25, \$596,000 in FY 2025-26, and \$388,000 annually thereafter (General Fund).
- Courts: Unknown, potentially-significant workload cost pressures as the courts are required to adjudicate violations of this bill's provisions (Special Fund - Trial Court Trust Fund, General Fund). See Staff Comments for additional detail.

**Background:** In the United States, children are more likely to die from gun violence than in any other high-income country. In 2020, gun violence overtook car accidents to become the number one cause of death for U.S. children and adolescents. In California, children are generally restricted from purchasing and possessing firearms and ammunition, except under specified circumstances. Nonetheless, according to an analysis of FBI data, in 29 of 62 active shooting incidents at educational facilities in the United States between 2000 and 2019, the offender was younger than 18, with an additional 10 shooters between 18 and 21 years old. Another federally-run center database shows at least 59 percent of the 2,275 school shootings researchers recorded since 1970 were committed by someone under 21 years old. The offender's age is unknown in another 18 percent of incidents.

There has been a variety of reporting on the subject of marketing firearms to children. Some examples of this practice include 1) the "Crickett rifle," a gun made for children by the company Keystone Sporting Arms. Keystone's website and some of its merchandise bear the image of "Davey Crickett," a gun-wielding cartoon insect; 2) the "JR-15," a child-size version of the AR-15, that is marketed to "look, feel, and operate just like Mom and Dad's gun;" and 3) a book series featuring "Little Jake," a boy who uses his gun to bring down a bear and save an African village from a marauding elephant. The publisher of the books says Little Jake is actually older than he looks: "Little Jake is a fictional character in his late teens. While small in stature so that young children may relate to him, Little Jake is old enough to hunt and fish safely on his own without adult supervision." This bill seeks to prohibit firearm manufacturer and other industry members from targeting minors with advertisements for firearms and related products.

There has been nearly continuous litigation in the federal courts over California's firearms laws. Last year, a federal judge ruled that California's ban on the AR-15 assault rifle was unconstitutional. (See *Miller v. Bonta*, (S.D. Cal., June 4, 2021) 542 F. Supp. 3d 1009.) *Miller* was the third federal district court decision in recent years to find a California firearms regulation unconstitutional under the Second Amendment to the United States Constitution, joining *Rhode v. Becerra* (S.D. Cal., 2020) 445 F. Supp. 3d 902 (ammunition background checks), and *Duncan v. Becerra* (9th Cir. 2020) 970 F.3d 1133 (high-capacity magazines). *Duncan* was subsequently overturned by the Ninth Circuit Court of Appeals sitting *en banc*. (*Duncan v. Bonta* (9th Cir. 2021) 19 F.4th 1087). Because this firearms bill may be interpreted as a restriction on commercial speech, it is almost certain to face a constitutional challenge. (See *Nordyke v. Santa Clara County* (9th Cir. 2009) 110 F.3d 707, 710 (holding that "an offer to sell firearms or ammunition" is constitutionally protected commercial speech under the First Amendment to the United States Constitution.)

**Proposed Law:**

- Prohibits a firearm industry member from advertising, marketing, or arranging for placement of an advertising or marketing communication concerning any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.
- Requires a court when determining whether marketing or advertising of a firearm-related product is attractive to minors to consider the totality of the circumstances, including criteria specified in the bill.
- Prohibits a firearm industry member publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product.
- Provides that any person in violation is liable for a civil penalty not to exceed \$25,000 for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. Specifies criteria the court must consider in setting the amount of the monetary penalty.
- Authorizes a person harmed by a violation to commence a civil action to recover their actual damages.
- Authorizes the court to order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct.
- Entitles a prevailing plaintiff to reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.

## AB 2571 (Bauer-Kahan)

Page 3 of 4

- Deems each copy or republication of prohibited marketing or advertising a separate violation.
- Contains an urgency clause.
- Defines terms for purposes of the bill.

### Related Legislation:

- SB 1327 (Hertzberg, 2022) establishes privately-enforced civil causes of action against any person who manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any firearm lacking a required serial number, assault weapon, .50 BMG rifle, or firearm precursor part, as specified. SB 1327 is pending in the Assembly Judiciary Committee.
- AB 452 (Friedman, 2022) requires local educational agencies to inform parents, through a notice, of California's child access prevention laws and other firearm laws. AB 452 is pending in this committee.
- AB 1594 (Ting, 2022) establishes a firearm industry standard of conduct, which would require a firearm industry member, as defined, to, among other things, establish, implement, and enforce reasonable controls, as defined, and adhere to specified laws pertaining to unfair methods of competition, unfair or deceptive acts or practices, or false advertising. The bill also prohibits 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. AB 1594 is pending in this committee.
- AB 1621 (Gipson, 2022), among other things, prohibits the sale, transfer, or possession of an unserialized firearm precursor part, except as specified, and explicitly prohibits the possession or transfer of a firearm without a serial number or mark of identification. AB 1621 is pending in this committee.

**Staff Comments:** Due to the likelihood that this bill could generate a constitutional challenge, the DOJ reported that its Governmental Law Section (GLS) require additional resources beginning in FY 2022-23 and concluding in FY 2025-26. Specifically, GLS would require 1.0 Deputy Attorney General and the legal complement of 1.0 Legal Secretary. In addition, the Consumer Protection Section (CPS), within the Public Rights Division anticipates an increase in workload investigating potential violations of the law as well as increased litigation of civil enforcement actions in state or federal court upon the enactment of AB 2571. To address the additional workload, CPS will require additional resources consisting of 1.0 Deputy Attorney General and the legal complement of 1.0 Legal Secretary, beginning in FY 2022-23 and ongoing.

While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. The proposed

**AB 2571 (Bauer-Kahan)**

Page 4 of 4

2022-2023 budget would appropriate \$138.5 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. Increased court workload results in additional pressure to increase the backfill amount appropriated from the General Fund for trial court operations.

-- END --

# EXHIBIT 8

**SENATE RULES COMMITTEE**  
Office of Senate Floor Analyses  
(916) 651-1520 Fax: (916) 327-4478

AB 2571

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THIRD READING

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Bill No: AB 2571  
Author: Bauer-Kahan (D) and Gipson (D), et al.  
Amended: 6/15/22 in Senate  
Vote: 27 - Urgency

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SENATE JUDICIARY COMMITTEE: 9-1, 6/14/22  
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,  
Wieckowski, Wiener  
NOES: Jones  
NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: 5-0, 6/16/22  
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski  
NO VOTE RECORDED: Bates, Jones

ASSEMBLY FLOOR: 48-16, 5/23/22 - See last page for vote

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**SUBJECT:** Firearms: advertising to minors

**SOURCE:** Governor Gavin Newsom

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**DIGEST:** This bill prohibits firearm industry members from advertising or marketing, as defined, firearm-related products to minors. This bill restricts the use of minors' personal information in connection with marketing or advertising firearm-related products to those minors.

**ANALYSIS:**

Existing federal law:

- 1) Provides, pursuant to the Second Amendment to the United States Constitution, that 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. (U.S. Const. Amend. 2.)

- 2) Prohibits a qualified civil liability action from being brought in any federal or state court. (15 U.S.C. § 7902.)
- 3) Establishes the federal Children’s Online Privacy Protection Act (COPPA) to provide protections and regulations regarding the collection of personal information from children under the age of 13. (15 U.S.C. § 6501 et seq.)

Existing state law:

- 1) Requires a person be at least 18 years of age to be sold most firearms and at least 21 years of age to be sold a handgun, except as specified. (Pen. Code §§ 27505, 27510.)
- 2) Establishes the Privacy Rights for California Minors in the Digital World (PRCMDW), which prohibits an operator of an internet website, online service, online application, or mobile application (“operator”) from specified acts. (Bus. & Prof. Code § 22580.)
- 3) Requires, pursuant to PRCMDW, certain operators to permit a minor user to remove the minor’s content or information and to further inform the minor of this right and the process for exercising it. (Bus. & Prof. Code § 22581.)
- 4) Requires, pursuant to the Parent’s Accountability and Child Protection Act, a person or business that conducts business in California, and that seeks to sell any product or service in or into California that is illegal under state law to sell to a minor to, notwithstanding any general term or condition, take reasonable steps, as specified, to ensure that the purchaser is of legal age at the time of purchase or delivery, including, but not limited to, verifying the age of the purchaser. (Civ. Code § 1798.99.1(a)(1).)
- 5) Prohibits a business from selling or sharing the personal information of a consumer if it has actual knowledge the consumer is less than 16 years of age unless the consumer has affirmatively authorized such sale or sharing. A business that willfully disregards the consumer’s age shall be deemed to have had actual knowledge of the consumer’s age. (Civ. Code § 1798.120.)
- 6) Defines “firearm” as 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. It defines “firearm precursor part” to mean a component of a firearm that is necessary to build or assemble a firearm and is either an unfinished receiver or handgun frame. Defines “ammunition” to include any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding

device, or projectile capable of being fired from a firearm with a deadly consequence. (Pen. Code §§ 16150(b), 16520, 16531.)

- 7) Requires firearms dealers to obtain certain identifying information from purchasers and forward that information to the Department of Justice (DOJ) to perform a background check on the purchaser to determine whether they are prohibited from possessing a firearm. (Pen. Code §§ 28160-28220.)

This bill:

- 1) Prohibits a firearm industry member from advertising, marketing, or arranging for placement of advertising or marketing communications concerning any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors.
- 2) Defines “firearm industry member” to include any of the following:
  - a) Any person or entity engaged in the manufacture, distribution, importation, marketing, wholesale, or retail sale of firearm-related products; or
  - b) Any person or entity formed for the express purpose of promoting, encouraging, or advocating for the purchase, use, or ownership of firearm-related products that endorses or advertises such products, or advertises, sponsors, or promotes events where they are sold or used.
- 3) Requires a court when determining whether marketing or advertising of a firearm-related product is attractive to minors to consider the totality of the circumstances, including whether the marketing or advertising:
  - a) Uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products;
  - b) Offers brand name merchandise for minors, including, but not limited to, hats, t-shirts, or other clothing, or toys, games, or stuffed animals that promotes a firearm industry member or firearm-related product;
  - c) Offers firearm-related products in sizes, colors, or designs that are specifically designed to be used by, or appeal to, minors;
  - d) Is part of a marketing or advertising campaign designed with the intent to appeal to minors;
  - e) Uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products; or



- f) Is placed in a publication created for the purpose of reaching an audience that is predominately composed of minors and not intended for a more general audience composed of adults.
- 4) Prohibits a member publishing material directed to minors in this state or who has actual knowledge that a minor in this state is using or receiving its material, from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product.
- 5) Provides that any person in violation is liable for a civil penalty not to exceed \$25,000 per violation in an action brought by the Attorney General or by any district attorney, county counsel, or city attorney. In assessing the amount of the civil penalty, the court shall consider relevant circumstances, including the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the misconduct, and the defendant's assets, liabilities, and net worth. Deems each copy or republication of prohibited marketing or advertising a separate violation.
- 6) Authorizes a person harmed to seek actual damages in a civil action.
- 7) Authorizes the court to order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct. Entitles a prevailing plaintiff to reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.
- 8) Defines "firearm-related product" as a firearm, ammunition, reloaded ammunition, a firearm precursor part, a firearm component, or a firearm accessory that has a specified connection to California.

## Comments

According to the author:

In 2021 there were approximately 259 unintentional shootings by children, resulting in 104 deaths and 168 injuries. Weapons used by children have put other children at risk. 91% of the victims in these shootings by children were also under 18, often siblings of the children shooting. In California, gun violence is the third-leading cause of death for children and teens. This

epidemic of deadly violence is fueled by an industry that encourages children to hold a gun as soon as they can walk.

Gun manufacturers view children as their next generation of advocates and customers, and target them with slick advertising – even children’s books. The advertising for these weapons is shameless. Children in California are not allowed to buy or own a gun, yet they are advertised to across all forms of media with cartoons, video games, and social media.

AB 2571 will prohibit a person or entity from publishing materials that advertise or market firearms or weapons to anyone under the age of 18. This bill would allow the Attorney General, a District or County Attorney, or a County Counsel to bring a civil action against each violation up to \$25,000.

Guns are not a toy. Guns are a tool of death. Taking away this tool of violent indoctrination from the gun industry is a vital step forward to protect California’s children.

*Prohibiting the marketing or advertising of such products to children*

This bill prohibits a firearm industry member from advertising or marketing any firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors. Furthermore, this bill places limitations on how these entities can utilize the personal information of minors in this context. If they are publishing material directed to minors in California or have actual knowledge that a minor is using or receiving its material, they are prohibited from knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of that minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising to that minor any firearm-related product. This bill also provides some direction to courts in determining whether marketing or advertising of a firearm-related product is attractive to minors. They are to consider the totality of the circumstances, including whether the marketing or advertising does certain specified things.

Violations of these provisions are subject to civil penalties in actions brought by public prosecutors, or actual damages in actions brought by injured persons.

*Legal obstacles*

The prohibitions in this bill restrict the commercial speech of the firearm industry members, but the mere fact that it restricts speech does not mean that such a restriction would violate the First Amendment of the United States Constitution or Article I of the California Constitution.

Generally speaking, the First Amendment and Article I, act to protect the freedom of expression of the citizens of California. Commercial speech, which is done on behalf of a company or individual for purpose of making a profit, is protected under the state and federal guarantees of free speech, but to a lesser degree than noncommercial speech.<sup>1</sup> Ultimately, the First Amendment protects commercial speech against “unwarranted” governmental regulation.

In order to be upheld as a valid restriction on commercial speech, the proposed law must meet the following four-part test: (1) the speech must be about a lawful activity and cannot be false or misleading; (2) the government must have a substantial interest; (3) the law must directly advance the governmental interest asserted; and (4) the law must be no more extensive than necessary. (*Central Hudson Gas v. Public Service Commission* (1980) 447 U.S. 559.) Although a determination is ultimately for the courts, arguably the proposed restriction on marketing and advertising could survive such a First Amendment challenge.

Similar laws already exist that restrict the advertising of other products to children. For instance, coin banks, toys, balloons, magic tricks, miniature bottles or cans, confections, dolls, or other items that appeal to minors or underage drinkers may not be used in connection with the merchandising of beer. (Bus. & Prof. Code § 25600.) Similarly, edible cannabis products cannot be designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis. (Bus. & Prof. Code § 26130.) Another particularly relevant example is PRCMDW, which prohibits an operator from specified conduct, such as marketing or advertising specified products or services such as firearms and alcoholic beverages on its website, online service or application that is directed to minors. It also prohibits operators from knowingly using the personal information of a minor with actual knowledge that the use is for the purpose of marketing or advertising such products or services to that minor, where the website, service, or application is directed to minors or there is actual knowledge that a minor is using the website, service, or application. (Bus. & Prof. Code § 22580.) As can be seen, the language of this bill borrows from these existing statutes.

One additional, potential legal barrier to the bill is the the federal Protection of Lawful Commerce in Arms Act (PLCAA), which prohibits a qualified civil liability action from being brought in any federal or state court. (15 U.S.C. § 7902.) A “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other

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<sup>1</sup> See *Gerawan Farming, Inc. v. Lyons* (2004) 33 Cal.4th 1, 22.

relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. (15 U.S.C. § 7903.) These statutes stand to preempt state laws that impose liability on manufacturers, sellers, and trade associations for the misuse of firearms by third parties.

However, there are exceptions to the PLCAA’s preemptive effect. Specifically, the federal law explicitly does not preempt “an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.” (15 U.S.C. § 7903.)

(NOTE: For a more thorough discussion, see the Senate Judiciary Committee analysis.)

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- DOJ: The DOJ reports costs of \$442,000 in Fiscal Year (FY) 2022-23, \$776,000 in F 2023-24, \$776,000 in FY 2024-25, \$596,000 in FY 2025-26, and \$388,000 annually thereafter (General Fund).
- Courts: Unknown, potentially-significant workload cost pressures as the courts are required to adjudicate violations of this bill’s provisions (Special Fund - Trial Court Trust Fund, General Fund).

**SUPPORT:** (Verified 6/20/22)

Governor Gavin Newsom (source)  
Brady California  
Brady Campaign to Prevent Gun Violence  
California School Employees Association  
City of Mountain View  
County of San Diego  
Everytown for Gun Safety  
Friends Committee on Legislation of California  
Giffords  
March for Our Lives  
Moms Demand Action for Gun Sense in America  
National Association of Social Workers, California Chapter  
Students Demand Action for Gun Sense in America

**OPPOSITION:** (Verified 6/20/22)

National Rifle Association

**ARGUMENTS IN SUPPORT:** The Brady Campaign to Prevent Gun Violence writes, “Current laws restrict the content and placement of advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors. This is done to prevent potentially harmful substances from getting in the hands of young people as well as preventing the glorification around them. While we certainly see the point of restricting ads around the previous products listed, unlike firearms none of these are a leading cause of death for children and teens.”

**ARGUMENTS IN OPPOSITION:** The National Rifle Association argues, “Even if one is to assume that AB 2571 meets the first three criteria of the test set forth in *Central Hudson*, the regulation fails the fourth part of the test. A minor may find a piece of advertising attractive for the same reasons as an adult. Adults and minors often use firearms for the same lawful purposes, prize the same characteristics in firearms, and therefore would be attracted to the same advertising materials. As AB 2571 would target advertising valued by both minors and adults it would necessarily ‘impinge on the speaker's ability to propose a commercial transaction and the adult listener's opportunity to obtain information about products.’”

ASSEMBLY FLOOR: 48-16, 5/23/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner

Horvath, Bryan, Calderon, Carrillo, Cervantes, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong,

Gallagher, Kiley, Lackey, Mathis, Patterson, Seyarto, Smith, Voepel, Waldron

NO VOTE RECORDED: Berman, Mia Bonta, Chen, Choi, Cooper, Gray,

Grayson, Mayes, Nguyen, O'Donnell, Blanca Rubio, Salas, Valladares, Wilson

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113

6/22/22 14:49:34

\*\*\*\* END \*\*\*\*

# EXHIBIT 9

CONCURRENCE IN SENATE AMENDMENTS

AB 2571 (Bauer-Kahan and Gipson)

As Amended June 15, 2022

2/3 vote. Urgency

**SUMMARY**

Prohibits firearm industry members from marketing or advertising firearm-related products to minors and authorizes public attorneys and injured plaintiffs to bring a civil action to enforce the prohibition, obtain injunctive relief, and seek either civil penalties, or, in some cases, damages for harms caused by a violation.

**Senate Amendments**

Declare that the act is an urgency statute necessary in order to protect public safety by prohibiting firearm advertising to minors as soon as possible, and shall go into immediate effect.

**COMMENTS**

This bill prohibits a firearm industry member from advertising, marketing, or arranging for placement any advertising or marketing communication concerning a firearm-related product when the communication is designed, intended, or reasonably appears to make the firearm-related product attractive to minors. The bill then requires a court, in determining whether the marketing or advertising communication makes the firearm-related product attractive to minors, to consider "the totality of the circumstances," including but not limited to whether the marketing or advertising does any of the following:

- 1) Uses caricatures that reasonably appear to be minors or cartoon characters to promote firearm-related products.
- 2) Offers brand name merchandise for minors, including but not limited to, hats, t-shirts or other clothing, toys, games, stuffed animals, that promotes a firearm industry member or firearm-related product.
- 3) Offers firearm-related products in sizes, colors or designs that are specifically designed to be used by, or appeal to, minors.
- 4) Is part of a marketing or advertising campaign designed with the intent to appeal to minors.
- 5) Uses images or depictions of minors in advertising and marketing materials to depict the use of firearm-related products.
- 6) Is placed in a publication created for the purpose of reaching an audience that is predominately comprised of minors and not intended for a more general audience comprised of adults.

*Remedies for violations.* The bill authorizes two types of civil actions to enforce compliance with its provisions. First, the Attorney General or any district attorney, county counsel, or city attorney would be authorized to bring a civil action in any court of competent jurisdiction in the name of the people of the State, county, or city, as appropriate, to seek a civil penalty. Any person found in such an action to have violated any provision of the bill would be liable for a

civil penalty not to exceed \$25,000 for each violation. The bill specifies a number of factors that courts should rely upon in evaluating whether or not to impose the maximum \$25,000 civil penalty: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. Second, the bill authorizes a person harmed by a violation of any provision of the bill to commence a civil action to recover actual damages. In either case, the court would be required to order injunctive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the court deems necessary to prevent the harm, and to award reasonable attorney's fees and costs to a prevailing plaintiff.

*The bill restricts some marketing and advertising of firearms, raising potential First Amendment concerns.* This bill focuses on advertising and marketing materials that are promulgated by a narrowly defined group of commercial speakers – the firearm industry – rather than on publishers, or even advertisers, in general. Given that these are the only groups that generally engage in this type of commercial speech, the means used by the bill seem narrowly tailored to address the source of the harmful marketing and advertising content, rather than focused on its dissemination. Furthermore, the type of advertising and marketing at issue in this bill is not generally directed towards lawful purchasers of firearms (i.e. adults); rather, they are specifically designed to appeal to, and be directed at, children. Therefore, denying this form of advertising and marketing does not significantly impact a protected interest that firearm industry members have to furnish truthful information to would-be lawful purchasers who have a corresponding interest in receiving such information. (See *Discount Tobacco City & Lottery, Inc. v. United States* (6th Cir. 2012) 674 F.3d 509, 520.) With the findings incorporated into the bill – that firearms marketing and advertising contributes to the unlawful sale of firearms to minors, as well as the unlawful transfer of firearms to minors by adults who may possess those weapons lawfully – the bill seems substantially related to the achievement of its objective.

### **According to the Author**

Some firearms manufacturers irresponsibly market weapons to children. For example, Wee 1 Tactical has begun marketing an AR-15 made specifically for children. They currently market the weapon, called a JR-15, with a cartoon skull-and-crossbones with a pacifier. . . . Under current law, the company would be able to market this weapon in California, as long as it does so off-line, e.g., in a magazine advertisement.

This legislation would restrict the marketing and advertising of firearms to minors in all media. Specifically, this bill would prohibit [a firearm industry member] . . . from marketing or advertising firearms, ammunition, or reloaded ammunition to minors.

### **Arguments in Support**

According to the Brady United Against Gun Violence:

Current laws restrict the content and placement of advertising and promotional marketing of alcohol, cannabis, and tobacco to protect minors. This is done to prevent potentially harmful substances from getting in the hands of young people as well as preventing the glorification around them. While we certainly see the point of restricting ads around the previous products listed, unlike firearms none of these are a leading cause of death for children and teens.



**Arguments in Opposition**

The National Rifle Association, Institute for Legislative Action:

[The] restriction in AB 2571 fails to appreciate that minors can and do possess and use firearms for a variety of lawful purposes. The state interest asserted in AB 2571 is to combat the "proliferation of firearms to and among minors." The bill also notes, "[t]his state has a compelling interest in ensuring that minors do not possess these dangerous weapons." The asserted interest is not necessarily to discourage illegal use of firearms by minors, but rather all use.

**FISCAL COMMENTS**

According to the Senate Appropriations Committee:

- 1) *Department of Justice (DOJ)*: The DOJ reports costs of \$442,000 in Fiscal Year (FY) 2022-23, \$775,000 in FY 2023-24, \$776,000 in FY 2024-25, \$596,000 in FY 2025-26, and \$388,000 annually thereafter (General Fund).
- 2) *Courts*: Unknown, potentially-significant workload cost pressures as the courts are required to adjudicate violations of this bill's provisions (Special Fund – Trial Court Trust Fund, General Fund).

**VOTES:**

**ASM PRIVACY AND CONSUMER PROTECTION: 7-1-3**

**YES:** Gabriel, Bauer-Kahan, Bennett, Berman, Mike Fong, Irwin, Wilson

**NO:** Kiley

**ABS, ABST OR NV:** Cunningham, Valladares, Wicks

**ASM JUDICIARY: 7-2-1**

**YES:** Stone, Kalra, Maienschein, Reyes, Robert Rivas, Friedman, Bloom

**NO:** Davies, Kiley

**ABS, ABST OR NV:** Cunningham

**ASM APPROPRIATIONS: 12-4-0**

**YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**NO:** Bigelow, Megan Dahle, Davies, Fong

**ASSEMBLY FLOOR: 48-16-14**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Bryan, Calderon, Carrillo, Cervantes, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

**NO:** Bigelow, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Patterson, Seyarto, Smith, Voepel, Waldron

**ABS, ABST OR NV:** Berman, Mia Bonta, Chen, Choi, Cooper, Gray, Grayson, Mayes, Nguyen, O'Donnell, Blanca Rubio, Salas, Valladares, Wilson

**AB 2571**

Page 4

**SENATE FLOOR: 27-7-6**

**YES:** Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Hertzberg, Hueso, Kamlager, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

**NO:** Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

**ABS, ABST OR NV:** Bates, Borgeas, Glazer, Gonzalez, Hurtado, Laird

**UPDATED**

VERSION: June 15, 2022

CONSULTANT: Landon Klein / P. & C.P. / (916) 319-2200

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**CERTIFICATE OF SERVICE**  
IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Junior Sports Magazines, Inc., et al. v. Bonta*  
Case No.: 2:22-cv-04663-CAS (JCx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY INJUNCTION**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Kevin J. Kelly, Deputy Attorney General  
[kevin.kelly@doj.ca.gov](mailto:kevin.kelly@doj.ca.gov)  
300 South Spring Street, Suite 9012  
Los Angeles, CA 90013  
*Attorney for Defendant*

I declare under penalty of perjury that the foregoing is true and correct.

Executed July 20, 2022.

  
\_\_\_\_\_  
Laura Palmerin

**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2024, an electronic PDF of PLAINTIFFS'-APPELLANTS' FURTHER EXCERPTS OF RECORD VOLUME I OF I was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Dated: September 17, 2024

Respectfully submitted,

**MICHEL & ASSOCIATES, P.C.**

s/ Anna M. Barvir

\_\_\_\_\_  
Anna M. Barvir

*Attorneys for Plaintiffs-Appellants*