



June 10th, 2022

Honorable Senator Thomas J. Umberg
1021 O Street, Room 3240
Sacramento, CA 95814

RE: AB 1594 (Ting): Firearms: civil suits.

Position: OPPOSED

Dear Senator Umberg,

The California Rifle & Pistol Association Incorporated (CRPA), founded in 1875, is a nonprofit membership and donor supported organization with members and supporters throughout California. CRPA works tirelessly to defend the civil and constitutional rights of individuals to choose to responsibly own and use firearms and endeavors to preserve their ability to protect their families, hunt, and enjoy competitive shooting events.

CRPA is in strong opposition to Assembly Bill 1594 (AB 1594). If enacted as introduced AB 1594 will prohibit a firearm industry member from manufacturing, marketing, importing, offering for wholesale, or offering for retail sale a firearm-related product that is likely to create a substantial and unreasonable risk of harm to public health and safety. Beginning on July 1, 2023, AB 1594 will also authorize a person who has suffered harm, the Attorney General, or specified city or county attorneys to bring a civil action against a firearm industry member for an act or omission in violation of the provisions described above or specified laws pertaining to unfair methods of competition, unfair or deceptive acts or practices, or false advertising. The bill would authorize a court that determines that a firearm industry has engaged in the prohibited conduct to award various relief, including injunctive relief, damages, and attorney's fees and costs.

One must ask what does this even mean, "a firearm-related product that is likely to create a substantial and unreasonable risk of harm to public health and safety."? AB 1594 is so broad almost anyone could bring civil action against the firearm industry. It is an attack on the lawful commerce of firearms with an intent to limit the availability of firearms. This is another misguided bill that seeks to quash and discriminate against the rights of those engaged in lawful commerce to restrict law abiding citizen's access to firearms instead of holding accountable those that misuse firearms. Firearms are inherently safe; they are an inanimate tool. It is the operator that can sometimes be unsafe either by negligence or malicious criminal intent. We must instead focus our time and resources on those who choose to use firearms in the commission of crimes! How is "a substantial and unreasonable risk of harm to public health and safety" even decided? Will this be determined case by case in a civil court of law?

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Federal law prevents firearm manufacturers from being sued! The Protection of Lawful Commerce Act (PLCAA) protects manufacturers and dealers from being sued when a firearm is used in a crime. The act was passed by the U.S. Senate on July 29, 2005, by a vote of 65–31. It was signed into law on October 26, 2005, by President George W. Bush and became Public Law 109–92. The law prohibits victims of a person misusing firearm products from seeking damages or injunctive or other relief. (Notice this is an individual person’s unlawful actions being considered) PLCAA determined that businesses in the United States that are legally engaging in commerce cannot, and should not, be liable for the criminal actions of others who decide to act outside of control of a company or misuse their product.

"The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States," PLCAA states.

As of October 2020, seven lawsuits have challenged the constitutionality of the law under the 5th and 10th Amendments, and resulted in both state and federal Appellate court decisions; all of these have found the PLCAA constitutional, except for the most recent, *Gustafson v. Springfield Armory*.

In October 2016, a Connecticut Superior Court judge dismissed a lawsuit filed by the families of some victims of the 2012 Sandy Hook Elementary School shooting against the manufacturer (Remington), the wholesale distributor, and the retailer of the semi-automatic rifle used in the shooting. Judge Barbara Bellis ruled that the suit "falls squarely within the broad immunity" provided to gun manufacturers and dealers by the Protection of Lawful Commerce in Arms Act.

In March 2019, the Connecticut Supreme Court reversed the lower court's ruling, allowing plaintiffs to continue their suit against Remington. The Supreme Court declined to intervene in ongoing litigation that had not been decided.

In 2020's *Gustafson v. Springfield Armory*, a three-judge panel of the Superior Court of Pennsylvania reversed a lower court in holding the PLCAA an unconstitutional violation of the Tenth Amendment and the Commerce Clause, the first time a court had so held. Although the lawsuit will be allowed to proceed, it won't move forward in its full, initial state, as the Connecticut Supreme Court upheld the trial court's dismissal of most of the plaintiff's claim. The only thing that does remain of the original lawsuit is the plaintiffs' allegation that Remington committed wrongful marketing, in violation of the Connecticut Unfair Trade Practices Act (CUTPA). The court held that PLCAA does not shield the gun company against this action.

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AB 1594 clearly is in direct conflict with federal law that has been tried and tested! If passed it will result in distracted law enforcement and wasted tax dollars. It will be challenged, and it will be repealed. Firearms are tools. You cannot hold manufacturers liable for the actions of those who use them in unsafe or criminal behavior. What's next, suing Ford and General Motors when an individual gets behind the wheel intoxicated and takes human life? Or suing a swimming pool manufacturer when a kid decides to dive into a pool never intended for diving? You are opening a pandoras box and taking actions that will bog down an already taxed court system.

The safety of Californians is at the very foundation of our organization. It has been our consistent goal to work toward common sense solutions regarding the issue of crime and firearm ownership. This can be done, however, without sacrificing our constitutional rights and the ability of the law-abiding to protect their families, hunt, and enjoy competitive shooting events. Certainly, going after those who manufacture lawful products is not the answer! For the foregoing reasons the California Rifle & Pistol Association Inc. stands in strong opposition to AB 1594 and strongly urges you to vote no on this misguided legislation.

Respectfully Submitted,

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