

Date of Hearing: April 15, 2013

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Raul Bocanegra, Chair

AB 760 (Dickinson) – As Amended: March 19, 2013

2/3 vote. Tax levy. Fiscal committee.

SUBJECT: Taxes: ammunition sales

SUMMARY: Imposes a tax on retailers for the privilege of selling ammunition, as defined, at the rate of \$0.05 per item of ammunition sold in this state on or after January 1, 2014. Specifically, this bill:

1) Contains the following legislative findings:

- a) People with mental illness are no more likely to commit violent acts than are others. California law, however, restricts the ownership of guns by individuals who have been adjudicated as being a danger to themselves or others because of mental illness.
- b) Recent tragic events involving mass shootings in Connecticut, Colorado, Arizona, and elsewhere, are revealing a pattern of young individuals who are suffering from some form of mental illness that progressed from mild or moderate to more serious conditions when those individuals' mental illness was not identified and treated at an early age.
- c) Research has found a clear relationship between early adjustment problems and later adolescent problems, and many of these adjustment problems are due to mild to moderate mental disorders among school-age children. In many cases, signs of these problems can be detected in early school grades.
- d) Treating mental illness in a timely manner before conditions become more severe, in conjunction with restricting gun ownership from individuals adjudicated as being a danger to themselves or others, may be a productive approach for reducing the extent to which some people suffering from mental illness commit a violent act with the use of a deadly weapon.
- e) In 1991, California enacted the School-Based Early Mental Health Intervention and Prevention Services Matching Grant program (EMHI). This program is intended to ensure that students receive the benefits of school-based early mental health intervention and prevention services.
- f) Scientific evaluation of EMHI has shown dramatic improvements in adjustment behavior among children in grades 1 to 3, and success in reducing the incidence of early mild to moderate mental illness.
- g) Due to state budget constraints, EMHI was defunded in the 2012-13 Budget Act. Therefore, providing a source of stable revenue to continue the EMHI matching grants is

in California's best interest, both in economic and human terms.

- h) A reduction in the incidence of mental illness is likely to reduce acts of violence committed with a deadly weapon in our state and, therefore, a tax on the sale of ammunition is a means of refunding the EMHI program.
- 2) Imposes a tax on retailers at the rate of \$0.05 per item of "ammunition" sold at retail in this state on or after January 1, 2014.
- 3) Imposes a complimentary excise tax on the storage, use, or other consumption in this state of "ammunition" purchased from a retailer, as specified.
- 4) Defines "ammunition" to mean "projectiles with their fuse, propelling charges, or primers fired from a weapon," or any of the individual components thereof, including "shot, sharpel [sic] bullets, or shells." The term does not include BBs or pellets commonly used in air rifles or air pistols.
- 5) Requires every retailer engaged in business in this state and making sales of ammunition to collect the tax from the purchaser and give to the purchaser a receipt therefor. Any person violating this requirement shall be guilty of a misdemeanor.
- 6) Makes it a misdemeanor for any retailer to advertise to the public or to any customer that the tax or any part thereof will be assumed by the retailer or that it will not be added to the price of the ammunition.
- 7) Provides that the tax required to be collected by the retailer shall be displayed separately on the sales check or receipt. Any person violating this requirement shall be guilty of a misdemeanor.
- 8) Exempts from taxation any item of ammunition purchased by a peace officer who must carry a weapon requiring ammunition while on duty, or by any governmental law enforcement agency employing that peace officer, for use in the normal course of employment.
- 9) Requires the State Board of Equalization (BOE) to administer and collect the new taxes pursuant to the Fee Collection Procedures Law.
- 10) Provides that the taxes are due and payable to the BOE quarterly.
- 11) Requires that the revenues raised be allocated to EMHI. Specifically, provides that all revenues "in this fund shall, upon appropriation by the Legislature, only be allocated to [EMHI]."
- 12) Takes immediate effect as a tax levy.

EXISTING FEDERAL LAW imposes:

- 1) A 10% tax upon the sale of pistols and revolvers by the manufacturer, producer, or importer.

- 2) An 11% tax upon the sale of firearms (other than pistols and revolvers), shells, and cartridges by the manufacturer, producer, or importer.

EXISTING STATE LAW imposes a:

- 1) Sales tax on retailers for the privilege of selling tangible personal property (TPP), absent a specific exemption. The tax is based upon the retailer's gross receipts from TPP sales in this state.
- 2) Complementary use tax on the storage, use, or other consumption in this state of TPP purchased from any retailer. The use tax is imposed on the purchaser, and unless the purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser remains liable for the tax, unless the use is exempted. The use tax is set at the same rate as the state's sales tax and must generally be remitted to the BOE.

FISCAL EFFECT: The BOE estimates that this bill would generate annual revenues of \$55 million.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

AB 760 seeks to reduce the incidence of mental illness by re-funding a small and successful state matching grant program addressing mild to moderate forms of mental illness in young children. The program, known as the School-Based Early Mental Health Intervention and Prevention Services for Children program (EMHI), has been operating since its enactment in 1991. The program provides screening and prevention services to K -3 grade students who exhibit school adjustment difficulties. Funding for the program was blue-penciled in the 2012-13 Budget.

According to the [Department] of Health Care Services, the systematic early detection and screening, combined with prompt intervention, as offered by EMHI, has been effective in reducing later adjustment difficulties in 79% of the students served by the program. Reducing student mental health and adjustment problems at an earlier age may very well reduce violent behavior by students later on in their academic careers.

AB 760 is not primarily intended to reduce the consumption and use of ammunition, although imposing a tax on the sale of ammunition may have that effect. Rather, the bill is intended to help fund a program which screens, identifies and reduces the number of people who suffer from mild or moderate forms of mental illness affecting their emotional condition and behavior, and, which left untreated, may increase their propensity to commit a violent act, possibly with a gun, resulting in tragic consequences. In essence then, the tax on ammunition is a means to reducing external costs created by the use of ammunition in certain circumstances by underwriting the costs of an effective mental health intervention and prevention program.

- 2) Proponents of this bill note:

Mental health experts across the country are calling for school-based prevention and early intervention services as a means of reducing many issues, including potential gun-related violence. Extensive research indicates that we can identify mental health concerns as early as kindergarten, and that left unattended these concerns will predictably develop into greater long-term issues, including school failure, substance abuse, social alienation, mental illness, and other antisocial behavior. As these issues progress, they are less [amenable] to prevention/intervention, and incur much greater social and fiscal costs for individuals, schools, and communities. The modest ammunition tax proposed in AB 760 is a small price to pay for supports that have been demonstrated to successfully address mental health issues before they become severe.

3) Opponents of this bill note:

Buyers of ammunition should not be taxed to pay for a school based mental health program. There is no substantive connection between the two that would justify it.

If the philosophy behind this proposed legislation is that ammunition buyers should be responsible for the actions of a small number of mentally disturbed persons, then all other products that can be lethally used, such as gasoline and knives, should similarly be taxed.

AB 760 would be excessive and abusive of those who enjoy the outdoor sports.

4) BOE notes the following in its staff analysis of this bill:

Record and reporting complications: "Ammunition retailers already collect and remit sales and use tax on their retail ammunition sales in California. These retailers most likely sell other tangible personal property subject to sales and use tax. Collecting an additional tax from ammunition purchasers will require retailers to keep track of ammunition sales separately from other sales of tangible personal property."

"Additionally, smaller ammunition retailers may find collecting the additional tax burdensome. Larger retailers are able to enter the ammunition subject to the additional tax into their computer system. Therefore, the tax will be automatically added to the purchase price once the product code or UPC is entered at the register. Cashiers at smaller supply stores, which are typically not computerized, must manually apply the additional tax, which could likely lead to collection and reporting errors."

5) Committee Staff Comments:

- a) What exactly are we taxing?: This bill proposes a new tax of \$0.05 per item of "ammunition" sold at retail in this state. Ammunition, in turn, is defined to mean "projectiles with their fuse, propelling charges, or primers fired from a weapon," or any of the individual components thereof, including "shot, sharpel [*sic*] bullets, or shells." This language is somewhat vague and potentially susceptible to differing interpretations. For example, must a projectile first be fired from a weapon before being properly considered an item of ammunition? Moreover, what does it mean to include within the definition of ammunition "any of the individual components thereof"? Are individual projectile components sold separately on the open market for subsequent assembly by consumers? If they are, does it make sense to tax these individual components at the

same rate as fully functioning projectiles? Finally, would this tax apply to retailers selling historical artifacts, like bullets from the Civil War? The author may wish to amend the definition of "ammunition" to provide greater clarity on these issues.

- b) How will the tax proceeds be used?: This bill requires that all revenues raised, less refunds and costs of collection, be allocated to EMHI. Specifically, this bill provides that all revenues "in this fund¹ shall, upon appropriation by the Legislature, only be allocated to [EMHI]." The Department of Health Care Services notes that, for the past 20 years, EMHI grants have funded prevention and early intervention programs for students experiencing mild-to-moderate school adjustment difficulties. Over this period, EMHI demonstrated a successful track record, and in fiscal year 2010-11 alone, served over 15,823 students. As the author notes, however, EMHI was defunded in the 2012-13 Budget Act. Therefore, this bill seeks to provide a source of stable revenues to continue the EMHI matching grants.
- c) A note on unintended consequences: Some might argue that, by increasing the retail price of ammunition sold in California, this bill might inadvertently encourage consumers to purchase ammunition from out-of-state retailers. This, in turn, could have a negative effect on sales tax revenues derived from ammunition purchases. This bill attempts to address this issue by imposing a complimentary excise tax, akin to a use tax, on the storage, use, or other consumption in this state of "ammunition". The use tax itself, however, has been historically underreported by consumers. Specifically, when consumers buy goods from out-of-state retailers that are not obligated to collect California's use tax, many consumers simply fail to report their use tax obligation directly to the state, as the law requires. Moreover, these purchases are very difficult to identify, and auditing individual consumers is most often cost prohibitive. It is possible that this bill's excise tax on ammunition could prove susceptible to similar complications.
- d) The exemption for peace officers: This bill exempts from taxation any item of ammunition purchased by a peace officer who must carry a weapon requiring ammunition while on duty. The exemption, however, does not specify whether a peace officer would be able to purchase tax-free ammunition for recreational purposes. The author may wish to clarify this point.
- e) A tax upon a tax?: California's sales tax is based upon a retailer's gross receipts from TPP sales, including sales of ammunition. Because this bill does not specifically exclude the ammunition tax from the definition of gross receipts, the new tax would likely be included in the final sales price of ammunition subject to sales tax. The author may wish to clarify this issue by either specifically including or excluding the new tax from the definition of "gross receipts" subject to sales tax.
- f) Federal tax on firearms and ammunition: As noted above, federal law imposes a Firearms and Ammunition Excise Tax (FAET) on the sale of firearms and ammunition by manufacturers, producers, and importers. Because the federal tax is imposed higher up the distribution chain, it does not fall prey to some of the potential administrative complications noted in BOE's staff analysis. Specifically, the FAET does not require

¹ It is not clear to which fund this bill refers, given that the bill does not establish a separate fund for the deposit of revenues.

retailers to track ammunition sales separately from other sales, which could result in significant compliance costs for smaller retailers and attendant reporting errors.

g) Related legislation:

- i) AB 180 (Bonta), of the current legislative session, would authorize the City of Oakland to enact and enforce an ordinance that is more restrictive than state law regulating the registration or licensing of commercially manufactured firearms. AB 180 has been referred to the Assembly Committee on Public Safety.
- ii) AB 187 (Bonta), of the current legislative session, would impose a 10% tax upon retailers for the privilege of selling ammunition on or after January 1, 2014. AB 187 has been referred to this Committee.
- iii) AB 992 (Ridley-Thomas), of the 2003-04 legislative session, would have imposed a fee of \$0.10 on every munition, as defined, sold at retail. Revenues raised would have been used to pay firearm-injury victims for uncompensated pecuniary losses. AB 992 died on the Assembly inactive file.
- iv) SCA 12 (Perata), of the 2001-02 legislative session, would have imposed a tax on retailers at the rate of \$0.05 for each munition sold at retail in this state. Revenues collected would have been deposited in a newly-established Trauma Center Fund. SCA 12 died in the Senate Committee on Revenue and Taxation.

h) Technical amendments: Committee staff suggests the following technical amendments to this bill:

- i) On page 3, line 23, strike "1991" and insert "1991,";
- ii) On page 3, line 37, strike "constraints" and insert "constraints,";
- iii) On page 5, line 28, strike "sharpe" and insert "shrapnel";
- iv) On page 5, line 33, strike "definition" and insert "definitions";
- v) On page 6, line 20, insert "of" before "ammunition";
- vi) On page 7, line 17, strike "tax" and insert "taxes";
- vii) On page 7, line 21, strike "tax" and insert "taxes"; and,
- viii) On page 7, line 23, strike "that" and insert "this".

REGISTERED SUPPORT / OPPOSITION:

Support

Children Now (sponsor)
Autism Deserves Equal Coverage

Autism Health Insurance Project
BlueSkies for Children
Brighter Beginnings
California Black Health Network
California Council of Community Mental Health Agencies
California Division of the American Association for Marriage and Family Therapy
California Immigrant Policy Center
California Pan-Ethnic Health Network
California School Health Centers Association
California Tax Reform Association
Children's Advocacy Institute
Children's Defense Fund – California
Children's Partnership
Coalition Against Gun Violence
Early Edge California
Lincoln Child Center
Los Angeles County Education Foundation
Los Angeles Trust for Children's Health
Lucile Packard Children's Hospital
Mental Health America of California
Oakland Schools Foundation
Public Profit
Time For Kids
United Advocates for Children and Families

Opposition

California Association of Firearms Retailers
California Chapters of Safari Club International
California Rifle and Pistol Association
California Sportsman's Lobby
California Waterfowl Association
Crossroads of the West Gun Shows
National Rifle Association
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Shasta County Sheriff Tom Bosenko
State Board of Equalization Member George Runner
2 individuals

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