

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

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