

BILL ANALYSIS

C.S.S.B. 19
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

From 2013 to 2017, Operation Choke Point was a program operated by the U.S. Department of Justice (DOJ) and the Federal Deposit Insurance Corporation (FDIC). Under the program, the DOJ issued unofficial directives to banks to restrict access to essential banking services for merchants in certain industries, including members of the firearms and ammunition industries. Although the program was officially ended in 2017, bank executives and financial institution leaders have reportedly continued the program's discriminatory banking practices. C.S.S.B. 19 seeks to ensure that companies contracting with a state agency or political subdivision do not have an internal practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 19 amends the Government Code to prohibit a state agency or political subdivision from entering into a contract paid partly or wholly from public funds with a company for the purchase of goods or services unless the contract contains a written verification from the company that:

- it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association based solely on the entity's or association's status as such; and
- it will not engage in any such discrimination during the contract term.

That prohibition applies only to a contract between a state agency or political subdivision and a company with at least 10 full-time employees that has a value of at least \$100,000.

C.S.S.B. 19 exempts from that prohibition a contract entered into in connection with or relating to the issuance, sale, or delivery of tax and revenue anticipation notes or the administration of matters related to the notes if the comptroller of public accounts determines in the comptroller's sole discretion that compliance with the prohibition is likely to prevent an issuance, sale, or delivery that is sufficient to address the general revenue cash flow shortfall forecast or the administration of matters related to the notes. The bill requires the comptroller, before making such a determination, to do the following:

- survey potential respondents or bidders to a solicitation for such a contract to determine the number of qualified potential respondents or bidders that are able to provide the

written verification regarding the discrimination against a firearm entity or firearm trade association; and

- evaluate the historical bidding performance of qualified potential bidders.

C.S.S.B. 19 defines, among other terms, "discriminate against a firearm entity or firearm trade association" as any of the following actions with respect to the entity or association:

- refusing to engage in the trade of any goods or services;
- refraining from continuing an existing business relationship;
- terminating an existing business relationship; or
- otherwise expressing a prejudice against the entity or association.

The term does not include the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 19 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute revises the definition of "discriminate against a firearm entity or firearm trade association" in the engrossed by excluding from the term the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories.

The substitute expands a reference to an organization exempt from federal income taxation and described by Section 501(c)(6) of the federal Internal Revenue Code of 1986, as in the engrossed, to refer instead to such an organization described by Section 501(c) of that code for purposes of the definition of "firearm trade association."

The substitute does not include a specification that appeared in the engrossed that the discriminatory practice, policy, guidance, or directive that would trigger the bill's prohibition is a written or unwritten internal practice, policy, guidance, or directive.

The substitute includes provisions that were not in the engrossed exempting from the prohibition certain contracts entered into in connection with or relating to tax and revenue anticipation notes and includes additional related provisions establishing certain requirements for the comptroller with respect to the exemption.