
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1089 **Hearing Date:** June 27, 2023
Author: Gipson
Version: April 19, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms*

HISTORY

Source: Brady Campaign; Giffords Law Center to Prevent Gun Violence

Prior Legislation: SB 1327 (Hertzberg, Ch. 146, Stats. of 2022)
AB 1594 (Ting, Ch. 98, Stats. of 2022)
AB 1621 (Gipson, Ch. 76, Stats. of 2022)
AB 2156 (Wicks, Ch. 142, Stats. of 2022)
AB 2571 (Bauer-Kahan, Ch. 77, Stats. of 2022)

Support: Consumer Attorneys of California; Peace Officers Research Association of California

Opposition: California Rifle & Pistol Association, Inc.

Assembly Floor Vote: 64 - 8

PURPOSE

The purpose of this bill is to include three-dimensional (3D) printers in several statutes regulating the manufacture of firearms, and to expand the applicability of existing civil liability laws to various conduct related to computer numerical control machines (CNC) and 3D printers.

Existing law defines a “firearm,” in certain provisions of the Penal Code, such as those relating to firearm enhancements and requirements related to lost and stolen firearms, 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, subd. (a).)

Existing law defines a firearm, for other specified provisions of the Penal Code, such as those relating to prohibitions on possession and transfer, among others, as the frame or receiver of the weapon, including both a completed frame or receiver or a firearm precursor part. (Pen. Code, §16520, subd. (b).)

Existing law defines a “firearm precursor part” as “any forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or

that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted.” (Pen. Code, § 16531, subd. (a).) *Existing law* prohibits any person or corporation from manufacturing more than three firearms in this state over the course of a year unless they are licensees. (Pen. Code, § 29010, subd. (a).)

Existing law prohibits a person, firm or corporation from using a 3D printer to manufacture any firearm, including a frame or receiver, or any firearm precursor part, unless that person, firm or corporation has a manufacturer’s license. (Pen. Code, § 29010, subd. (b).)

Existing law defines “three-dimensional printer, for the purposes of the prohibition above, as a computer-aided manufacturing device capable of producing a three-dimensional object from a three-dimensional digital model through an additive manufacturing process that involves the layering of two-dimensional cross sections formed of a resin or similar material that are fused together to form a three-dimensional object. (Pen. Code, § 29010, subd. (b).)

Existing law provides that violations of the prohibitions above are misdemeanors. (Pen. Code, § 29010, subd. (d).)

Existing law provides that the Department of Justice (DOJ) shall accept applications for, and shall grant licenses permitting, the manufacture of firearms within this state. (Pen. Code § 29050, subd. (a).)

Existing law prohibits the DOJ from granting a license unless and until the applicant presents proof of all of the following:

- A valid license to manufacture firearms issued by the Federal Government;
- Any regulatory or business license required by local government;
- A valid seller’s permit or resale certificate issued by the State Board of Equalization, if applicable; and,
- A certificate of eligibility issued by the DOJ. (Pen. Code, § 29050, subd. (b).)

Existing law provides that a licensee’s license cannot be valid for more than one year from the date of issuance. (Pen. Code, § 29050, subd. (c).)

Existing law requires the DOJ to maintain a centralized list of all persons licensed to manufacture firearms. (Pen. Code § 29060.)

Existing law provides that a firearms manufacturer’s license can be revoked and that a licensee may become permanently ineligible to hold a license, as specified. (Pen. Code § 29065.)

Existing law makes it a misdemeanor for a person to knowingly possess a firearm without a valid state or federal serial number. (Pen. Code, § 23920.)

Existing law states that prior to manufacturing or assembling a firearm (not including precursor parts) that does not have a valid state or federal serial number, a person must:

- Apply to the DOJ for a serial number,
- Describe the firearm they intend to assemble, and;
- Provide their date of birth, address and full name. (Pen. Code, § 29180, subd. (b)(1).)

Existing law requires that within 10 days of manufacturing or assembling a firearm (not including precursor parts), they must engrave or permanently affix the serial number previously provided to them by the DOJ and notify the DOJ of such. (Pen. Code, § 29180, subd. (b)(2)-(3).)

Existing law prohibits persons or corporations from using a CNC milling machine to manufacture a firearm or firearm precursor part unless they are a federally licensed firearms manufacturer or importer. (Pen. Code, § 29185, subd. (a).)

Existing law states that it is unlawful to sell, offer to sell, or transfer a CNC milling machine that has the sole or primary function of manufacturing firearms to any person aside from a federally licensed firearms manufacturer or importer. (Pen. Code, § 29185, subd. (b).)

Existing law provides that it is unlawful to possess, purchase, or receive a CNC milling machine that has the sole or primary function of manufacturing firearms unless a person is a federally licensed firearms manufacturer or importer. (Pen. Code, § 29185, subd. (c).)

Existing law exempts air carriers, certain business persons, and other specified persons from the prohibition on possessing, purchasing, transferring or selling specified CNC milling machines. (Pen. Code, § 29185, subd. (d).)

Existing law provides that violations of the above prohibitions regarding CNC milling machines are punishable as misdemeanors. (Pen. Code, § 29185, subd. (f).)

Existing law establishes the “Firearm Industry Responsibility Act” (FIRA) which allows for civil actions to be brought against firearm industry members who deal in abnormally dangerous firearm-related products. (Civ. Code, § 3273.50 *et seq.*)

Existing law for the purposes of FIRA, defines “firearm-related product” as a firearm, ammunition, a firearm precursor part, a firearm component, firearm manufacturing machine, and a firearm accessory that meets any of several specified conditions. (Civ. Code, §3273.50, subd. (d).)

Existing law authorizes any resident of, or visitor to, California, other than an officer or employee of a state or local governmental entity in this state, to bring a civil action against any person who knowingly traffics in illegal firearms and in firearm parts in the state. Also requires persons who bring lawsuits against enforcement of firearms laws to pay for the attorney’s fees of the state if the state prevails. (Bus. & Prof. Code, § 22949.60 *et seq.*; Civ. Code, § 1021.11)

This bill includes a "firearm manufacturing machine" in the definition of a "firearm-related product" for purposes of FIRA.

This bill, for the purposes of FIRA, defines “firearm manufacturing machine” as a 3D printer, as defined in this bill the Penal Code, or CNC milling machine that is marketed or sold as, or reasonably designed or intended to be used to manufacture or produce a firearm.

This bill provides that a civil action may be brought against a person who knowingly:

- Distributes or causes to be distributed, by any means including the internet, any digital firearm manufacturing code to any person not exempted as specified.
- Unlawfully uses, possesses, or otherwise transfers specified CNC milling machines or 3D printers, even if this conduct does not result in a conviction.

This bill provides that a person who commits one of the above acts shall be strictly liable for any personal injury or property damage inflicted by the use of a firearm that is manufactured or produced using the digital firearm manufacturing code that they distributed or caused to be distributed, or that is manufactured by means of a CNC milling machine, a 3D printer, or a similar machine.

This bill provides that the Attorney General, county counsel, or city attorney may bring an action in any court of competent jurisdiction to establish that a person has violated the above provisions and may seek a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation, as well as injunctive relief sufficient to prevent the person and any other defendant from further violating the law.

This bill provides that a prevailing plaintiff in the civil actions set forth above is entitled to recover reasonable attorney’s fees and costs.

This bill defines the terms “digital firearm manufacturing code” and “federally licensed firearms manufacturer” for the purposes of the civil liability provisions above.

This bill prohibits any person, other than a state-licensed firearms manufacturer, from using a CNC milling machine or 3D printer to manufacture a firearm.

This bill makes it a crime to sell, transfer, or possess a CNC milling machine or 3D printer that has a sole or primary function of manufacturing firearms, unless it is done by a state-licensed manufacturer.

This bill requires a person who possesses a 3D printer that has the sole or primary function of manufacturing a firearm before July 1, 2024, to do the following within 90 days of that date in order to not be in violation of state law:

- Sell or transfer the device to a state-licensed firearms manufacturer
- Sell or transfer the device to a businessperson that sells such devices to state-licensed firearms manufacturers,
- Take the device out of state,
- Give the device to a law enforcement agency, or;

- Otherwise lawfully terminate possession of the device.

This bill defines “state-licensed firearms manufacturer” as a person licensed to manufacture firearms under California state law, consistent with the definition of the term in other provisions of existing law.

This bill contains a severability clause.

COMMENTS

1. Need for This Bill

According to the Author:

Assembly Bill 1089 seeks to build on California’s recently enacted ghost gun reforms by closing additional gaps and creating a civil cause of action to assist in accountability and enforcement against companies whose sale or advertising practices unfairly and deceptively induce California buyers to illegally obtain and use ghost gun manufacturing machines without a manufacturer’s license.

2. The Persistent Ghost Gun Crisis

In the United States, traditional firearms are produced by licensed manufacturers and sold through licensed gun dealers. Federal law requires all guns manufactured in the United States and imported from abroad to have serial numbers, typically displayed on the back of the frame. By contrast, “ghost guns” are manufactured in parts – also known as “firearm precursor parts – which can be acquired without a background check and can easily be assembled by an unlicensed buyer. Ghost guns are designed to avoid regulation by being sold in DIY kits containing their component parts, which, individually, are unregulated, but when assembled form a fully functional firearm. Ghost guns are also unserialized, meaning they cannot be traced by law enforcement. According to recent reporting by the New York Times:

The criminal underground has long relied on stolen weapons with filed-off serial numbers, but ghost guns represent a digital-age upgrade, and they are especially prevalent in coastal blue states with strict firearm laws. Nowhere is that truer than in California, where their proliferation has reached epidemic proportions [...] Over the past 18 months, the officials said, ghost guns accounted for 25 to 50 percent of firearms recovered at crime scenes. The vast majority of suspects caught with them were legally prohibited from having guns.¹

Advances in home firearm manufacturing technology and the general untraceability of ghost guns have made them the weapon of choice for those seeking to commit crime. And California remains at the epicenter of the ghost gun crisis: in Los Angeles alone, the LAPD recovered 1,921

¹ Thrush, Glenn. “Ghost Guns’: Firearm Kits Bought Online Fuel Epidemic of Violence.” Originally published 14 November 2021; updated 26 January 2022. <https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html>

ghost guns in 2021, more than double the amount recovered in 2020.² In 2022, DOJ agents recovered 54 ghost guns as part of the Armed Prohibited Persons System Program, representing a 575% increase since 2018, when only 8 ghost guns were seized.³

3. Manufacture of Firearms Using 3D Printers and Computer Numerical Control (CNC) Milling Machines

Computer numerical control (CNC) milling machines are machines capable of automatically processing raw materials such as metal, plastic, wood or composite into digitally modeled shapes based solely on programmed instructions, without the need for a human operator. CNC milling machines use subtractive manufacturing: essentially breaking down a raw material until the desired product is created. 3D printers, by contrast, use an additive manufacturing process which lays down consecutive layers of material to generate various products. 3D printers have grown significantly in popularity in recent years - the first 3D-printed gun, the “Liberator,” was produced in 2013, and since then its design has become widely available online.⁴ Since 2013, however, the quality and design of 3D printed firearms have improved significantly, and the process has become more widespread. For instance, a company known as “Ghost Gunner” is currently marketing its latest CNC milling machine, the Ghost Gunner 3, which costs only \$2,500 and comes with programmed code to complete several fully functional assault-style weapons.⁵ A review of an earlier model noted that the machine, worked so well that it may signal a new era in the gun control debate, one where the barrier to legally building an untraceable, durable, and deadly semiautomatic rifle has reached an unprecedented low point in cost and skill.”⁶ In 2019 the FBI tested a newer 3D-printed firearm design and concluded the firearm was functional and lethal as designed. While most commercial-grade polymer 3D printers are unaffordable for most individuals, academic and industry experts state that motivated individuals can use more affordable 3D printers to print and subsequently strengthen the quality and reliability of a 3D printed firearm.⁷

In December 2021, the U.S. Office of the Inspector General (OIG) conducted an audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regarding that agency’s response readiness related to 3D printed firearms, and concluded that ATF’s threat assessment and technological awareness was lacking. According to the report, ATF had not considered 3D-printed firearms a priority because few of them have been confirmed to have been used in crimes that the ATF has investigated.⁸ However, this outdated approach is likely to change due to the ATF’s recent promulgation of a federal regulatory rule that modernizes the definition of a firearm and makes clear that parts that are readily convertible to functional weapons – or frames and

² “Ghost Guns Recoveries and Shootings.” Published by Everytown for Gun Safety. Last Updated 8 April 2022. [Ghost Guns Recoveries and Shootings | Everytown Research & Policy](#)

³ [California Department of Justice Releases 2022 Armed and Prohibited Persons System Program Annual Report | State of California - Department of Justice - Office of the Attorney General](#)

⁴ “The Liberator – the world’s first 3d printed handgun.” [The Liberator – the world’s first 3D printed handgun · V&A \(vam.ac.uk\)](#)

⁵ <https://ghostgunner.net/product/ghost-gunner-3-deposit/>

⁶ “I made an untraceable AR-15 Ghost Gun in my office – and it was easy.” *WIRED Magazine*. 3 June, 2015. <https://www.wired.com/2015/06/i-made-an-untraceable-ar-15-ghost-gun/>

⁷ “Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Monitoring of 3-D Firearm Printing Technology.” Office of the Inspector General. Published December 2021.

<https://oig.justice.gov/sites/default/files/reports/22-016.pdf>

⁸ *Ibid.*

receivers of weapons – are subject to the same regulations as traditional firearms.⁹ Under that rule, while the updated definition of “frame or receiver” does not include 3D printed firearms, it does require that receivers or parts kits be serialized for tracking and sent to federal firearms licensees (dealers) before being transferred to buyers.

4. Effect of This Bill

On June 30, 2022, Governor Newsom signed AB 1621 (Gipson, Ch. 76, Stats. of 2022), a comprehensive measure aimed at curbing the ghost gun epidemic, in large part via revising state regulations regarding firearm “precursor parts,” or components that may be readily convertible into usable firearms. The bill also established several provisions of law limiting the acquisition, possession, purchase and use of CNC milling machines that have the sole or primary function of manufacturing firearms by any entity except for a federally licensed firearms manufacturer or importer, subject to various exceptions (i.e. for common carriers and entities that sell CNC machines to manufacturing licensees). Another exemption applies to persons who possessed a CNC milling machine before the effective date of those restrictions (June 30, 2022), and within 90 days of that date terminates possession of the machine in one of several specified manners.¹⁰ Existing law also provides for the licensure of firearms manufacturers within the California.¹¹

This bill extends the CNC restrictions established by AB 1621 to 3D printers that have the sole or primary function of manufacturing firearms, and modifies the exemptions related to federally licensed firearms manufacturers to instead refer to state licensed firearms manufacturers. This latter change is largely pro forma, as a federal manufacturer’s license is a prerequisite of a state license. The bill also adopts AB 1621’s CNC machine relinquishment provisions for 3D printers, and provides that a person who possessed a 3D printer before July 1, 2024, and within 90 days of that date relinquishes possession of the printer in a manner provided is exempt from the above restrictions.

5. Double Referral

Another section of this bill makes various changes to California’s law regarding civil liability for firearm-related damage. Specifically, the bill expands firearm civil liability laws to include the use of CNC milling machines and 3D printers, and imposes strict liability for injuries and property damage caused by firearms manufactured with unlawfully distributed 3D firearm manufacturing codes and unlawfully possessed CNC machines and 3D printers. Because these provisions are within the Judiciary Committee’s jurisdiction, this bill has been double-referred and the civil liability issues will be fully analyzed by that committee.

⁹ [Federal Register :: Definition of “Frame or Receiver” and Identification of Firearms](#) – adopted August 24, 2022.

¹⁰ Under PC §29185(d)(3), an individual seeking to get rid of a CNC milling machine per the bill’s requirements may sell or transfer the machine to a licensed manufacturer, a business that sells to licensed manufacturers, may remove the machine from California or relinquish the machine to law enforcement, or may otherwise lawfully terminate possession.

¹¹ Under Penal Code §29050(b), in order to obtain a state firearm manufacturing license, an applicant must have a federal license, any regulatory or business license required by local government, a valid seller’s permit issued by the Board of Equalization, and a certificate of eligibility issued by DOJ.

6. Fifth Amendment Considerations

The Fifth Amendment to the United States Constitution provides, in part, that private property shall not be taken for public use without just compensation. There are generally two types of ‘takings’ under the Fifth Amendment: “physical” takings in which the government literally takes the property from its owner, and “regulatory” takings in which the government restricts the owner’s right so much as to deprive them of all economically beneficial use of the property.¹² The United States Supreme Court has established that “a state statute that substantially furthers important public policies may so frustrate distinct investment-backed expectations as to amount to a ‘taking.’ Put another way, while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.¹³ It is also well-settled that a regulation adopted under a state’s police power to protect the public, health, safety or welfare is not a taking, even if the taking reduces the value of the property.¹⁴

Because this bill requires current owners to relinquish possession of 3D printers that have the sole or primary function of manufacturing firearms, it may be considered as imposing a ‘taking’ under the Fifth Amendment. Of particular relevance here is a recent Ninth Circuit case which examined, in part, whether California’s ban on extended capacity magazines constituted a regulatory taking.¹⁵ Under that ban, an owner of a large-capacity magazine was required to choose one of four options: they could modify the magazine to accommodate fewer rounds, sell the magazine to a firearms dealer, remove the magazine to another state, or turn it over to law enforcement for destruction. The Ninth Circuit reasoned that California’s ban on extended capacity magazines was not a regulatory facial taking in part because there was no record demonstrating the relinquishment procedures deprived owners of all economically beneficial use of the property with respect to every owner of an extended capacity magazine. It was also not a facial physical taking as, “[m]andating the sale, transfer, modification, or destruction of a dangerous item cannot reasonably be considered a taking akin to a physical invasion of a rental building or the physical confiscation of raisins.”¹⁶ This case provides a useful, although not perfect, analogy to this bill, which gives owners of 3D printers various options that, taken together, do not deprive these owners of all economically beneficial use of the printers. In any event, it is entirely possible that this bill will see legal challenges on this issue.

7. Argument in Support

According to Brady California, one of the bill’s co-sponsors:

[G]iven their unregulated and untraceable nature, ghost guns are increasingly the weapons of choice for criminals in California and their use has boomed over the last few years. In Los Angeles, for instance, the number of ghost guns seized has increased by approximately 400% since 2017. In 2020, the LAPD confiscated 813 ghost guns, while in the first 11 months of 2021, the LAPD had already confiscated 1,780 ghost guns. San Diego, San Francisco, and other cities and counties across California have seen similar proliferation of these weapons. Every day, Californians

¹² See: [“The Fifth Amendment: Physical and Regulatory Takings”](#)

¹³ *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)

¹⁴ *Hadacheck v. Sebastian*, 239 U.S. 394 (1915)

¹⁵ *Duncan v. Bonta* 19 F.4th 1087 (2021) [vacated and remanded by the Supreme Court for further consideration in light of *New York State Rifle & Pistol Assn., Inc. v. Bruen* (2022) 142 S.Ct. 2111];

¹⁶ *Id.* at 1112, 1113.

are being killed, injured, and traumatized because ghost guns are not sufficiently regulated in the state and country.

President Biden issued an executive order in June 2021 directing the Attorney General to address the issue, and on April 11, 2022, the Attorney General issued a final rule that treats unfinished frames and receivers as firearms. This is an important step forward but it has not removed the need for states to take action, as the federal regulations are likely to be challenged in court and executive orders are subject to change when there is a change in administration. California has taken strong action, but additional clarification and strengthening is needed.

Just last year, California passed two of the strongest laws regulating ghost guns AB 1621 (Gipson) and AB 2156 (Wicks). Both of these bills, AB 1621 (Gipson) and AB 2156 (Wicks), in part worked to prohibit unlicensed manufacturers from using digitally programmable machines, such as 3-D printers and computerized numerical control (CNC) milling machines, to manufacture firearms. However, despite the immediate and life saving impact of the passage and implementation of these bills, we are already seeing certain ghost gun industry members working diligently to find a way around the law, and subsequently continuing to sell ghost gun manufacturing machines. These machines are specifically designed to allow anyone to produce firearms or firearm frames or receivers with little more than a press of a button and the sellers are claiming that despite selling these machines with the necessary files and materials to manufacture a gun or gun parts, that they are just selling machines and that the sales are permitted under the law because they claim that their primary purpose is not to manufacture firearms. These industry members are intentionally circumventing the intended purpose of both AB 1621 and AB 2156 and this bill can prevent them from doing so.

This bill will strengthen and clarify the law to preclude the unregulated use of these machines to manufacture firearms or firearm frames or receivers, by requiring a California-issued firearm manufacturer license in order to lawfully use any 3-D printer or CNC milling machine to manufacture a firearm, including a completed or unfinished frame or receiver of a firearm and in order to lawfully possess or purchase a 3-D printer or CNC milling machine that has the primary or intended function of manufacturing firearms. It would also make it unlawful to sell, offer to sell, or transfer a 3-D printer or CNC milling machine that has the primary or intended function of manufacturing firearms to anyone who is not a licensed manufacturer.

These changes are necessary to address the intentional and dangerous attempts to circumvent California's lifesaving ghost gun reforms.

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