
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 1327 **Hearing Date:** April 26, 2022
Author: Hertzberg
Version: April 7, 2022
Urgency: No **Fiscal:** No
Consultant: AB

Subject: *Firearms: private rights of action*

HISTORY

Source: Governor Gavin Newsom

Prior Legislation: SB 118 (Committee on Budget), Ch. 29, Stats. of 2020
AB 897 (Gipson), Ch. 730, Stats. of 2019
AB 857 (Cooper), Ch. 60, Stats. of 2016
SB 880 (Hall), Ch. 48, Stats. of 2016

Support: Consumer Attorneys of California; Everytown for Gun Safety Action Fund; Moms Demand Action for Gun Sense in America; City of Mountain View; National Association of Social Workers; Students Demand Action for Gun Sense in America

Opposition: California Rifle and Pistol Association; Gun Owners of California; National Rifle Association – Institute for Legislative Action

PURPOSE

The purpose of this bill is to prohibit various conduct related to assault weapons and firearm precursor parts, with limited exceptions, and permit enforcement of this prohibition exclusively through civil suits initiated by private parties, as provided.

Existing federal law, the Second Amendment to the United States Constitution, provides that a well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed. (United States Const., 2nd Amend.)

Existing federal law, the Brady Handgun Violence Prevention Act, generally requires that background checks be conducted on individuals before a firearm may be purchased from a federally licensed dealer, manufacturer or importer, subject to exceptions. It also prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm which has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce. (18 U.S.C. §922)

Existing federal law makes it unlawful to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not as detectable by walk-through metal detection as a

security exemplar containing 3.7 oz. of steel, or any firearm with major components that do not generate an accurate image before standard airport imaging technology. (18 U.S.C. § 922(p).)

Existing federal law requires licensed importers and licensed manufacturers to identify each firearm imported or manufactured by using the serial number engraved or cast on the receiver or frame of the weapon, in such manner as prescribed by the Attorney General. (18 U.S.C. §923(i).)

Existing federal law, the Protection of Lawful Commerce in Arms Act, prevents firearms manufacturers and licensed dealers from being held liable for negligence when crimes have been committed with their products. (15 U.S.C. §§7901-7903).

Existing state law defines “firearm” as a device, designed to be used as a weapon, from which is expelled through the barrel, a projectile by the force of an explosion or other form of combustion. (Penal Code §16520).

Existing law defines “firearm precursor part” as a component of a firearm that is necessary to build or assemble a firearm and is described as either an unfinished receiver, as specified, or an unfinished handgun frame. (Penal Code §16531(a).)

Existing law requires the California Department of Justice (DOJ) to provide written guidance and pictorial diagrams demonstrating each category of firearm precursor part. (Penal Code §16531(b).)

Existing law makes it unlawful to change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol, revolver, or any other firearm, without first having secured written permission from the to make that change, alteration, or removal. (Penal Code §23900).

Existing law provides that the DOJ, upon request, may assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer’s number or other mark of identification, or whenever the manufacturer’s number or another mark of identification assigned by DOJ has been destroyed. (Penal Code §23910).

Existing law makes it a misdemeanor for any person to buy, receive, dispose of, sell, offer to sell or have possession any pistol, revolver, or other firearm that has had the name of the maker or model, or the manufacturer's number or other mark of identification changed, altered, removed, or obliterated, subject to limited exceptions. (Penal Code §§ 23920, 23925).

Existing law generally prohibits any person or entity from selling, loaning or transferring a handgun to an individual under the age of 21, and from selling, loaning or transferring any type of firearm to an individual under the age of 18, subject to certain exception. (Penal Code §§ 27505, 27510).

Existing law, effective January 1, 2022, provides that a minor shall not possess a handgun or a semiautomatic centerfire rifle, and, commencing July 1, 2023, provides that a minor shall not possess any firearm, subject to exceptions. Penal Code §§ 29610, 29615).

Existing law prohibits the sale, loan or transfer of a firearm by a person or entity to a prohibited person, as specified, or to anyone whom the person or entity knows or has cause to believe is not

the actual purchaser or transferee, or to anyone who is not the one actually being loaned the firearm, as specified. (Penal Code §§ 27500, 27515)

Existing law provides that a person, firm, or corporation licensed to manufacture firearms pursuant to federal law shall not manufacture firearms within California unless they are licensed pursuant to state law. (Penal Code §29010).

Existing law provides that each firearm a licensee manufactures in this state shall be identified with a unique serial number stamped onto the firearm, as specified. (Penal Code §29125).

Existing law, commencing July 1, 2022, makes it a misdemeanor for a person or entity to sell a firearm precursor part to a person under 21 years of age or to supply, deliver or give possession of a firearm precursor part to a minor, as specified. (Penal Code §30400).

Existing law, commencing July 1, 2022, makes it a misdemeanor for a person or entity to supply, deliver, sell or give possession of a firearm precursor part to a prohibited person, as defined, and for a prohibited person to own or possess a firearm precursor part. (Penal Code §§30405, 30406).

Existing law, commencing July 1, 2022, provides that the sale of a firearm precursor part by any party shall be conducted by or processed through a licensed firearm precursor part vendor, and prohibits a California resident from bringing or transporting into the state a firearm precursor part obtained outside the state, subject to certain conditions and exceptions. (Penal Code §§ 30412, 30414).

Existing law contains legislative findings and declarations that the proliferation and use of assault and .50 BMG rifles poses a threat to the health, safety, and security of all citizens of California. (Penal Code § 30505.)

Current law states legislative intent to place restrictions on the use of assault weapons and .50 BMG rifles and to establish a registration and permit procedure for their lawful sale and possession. (Penal Code § 30505.)

Existing law defines “assault weapon” to include certain specified semiautomatic rifles. (Penal Code §30510).

Existing law also defines “assault weapon” to include certain specified rifles, pistols or shotguns with various characteristics, as specified. (Penal Code § 30515).

Existing law defines a “.50 BMG rifle” as a center fire rifle that can fire a .50 BMG cartridge and is not already an assault weapon or machinegun, and additionally defines “.50 BMG cartridge” to mean a cartridge with certain physical specifications. (Penal Code §§ 30525, 30530).

Existing law establishes various criminal penalties for any person who manufactures, distributes, transports, imports, gives, lends, or possesses any assault weapon or .50 BMG rifle. (Penal Code §§ 30600, 30605, 30610).

Existing law provides that possession of any assault weapon or .50 BMG rifle except as authorized constitutes a public nuisance, and that the Attorney General, any district attorney, or any city attorney may, in lieu of criminal prosecution, bring a civil action or reach a civil compromise in any superior court to enjoin the manufacture of, importation of, keeping for sale

of, offering or exposing for sale, giving, lending, or possession of an assault weapon or .50 BMG rifle. (Penal Code §30800).

This bill defines “firearm,” “firearm precursor part,” “assault weapon,” and “.50 BMG rifle” consistent with definitions for those terms in the Penal Code.

This bill defines “unserialized firearm” as a firearm that does not have a serial number as required by law or has had its serial number altered or obliterated.

This bill provides that no person within this state may manufacture or cause to be manufactured, distribute, transport, or import into the state, or cause to be distributed, transported, or imported into the state, keep for sale, offer or expose for sale, or give or lend, any assault weapon, .50 BMG rifle, or unserialized firearm, except as provided.

This bill No person within this state may manufacture or cause to be manufactured, distribute, transport, or import into the state, or cause to be distributed or transported or imported into the state, keep for sale, offer or expose for sale, or give or lend, any firearm precursor part, except as provided.

This bill specifies that the above prohibitions apply whether or not the specified firearm or precursor part is misused or is intended to be misused in a criminal or unlawful manner.

This bill provides certain exceptions to the above prohibitions regarding peace officers and firearms handled in probate.

This bill enumerates the circumstances under which a licensed firearms dealer may transfer or take possession of an assault weapon, .50 BMG rifle, or precursor part.

This bill provides that its provisions and prohibitions shall be enforced exclusively through specified private civil actions, and that no enforcement action may be taken or threatened by the state or a political subdivision thereof.

This bill authorizes any person, 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 does any of the following:

- Violates the prohibitions above
- Engages in conduct that aids or abets a violation of the prohibitions above
- Commits an act with the intent to engage in the above prohibitions

This bill provides that if a claimant prevails in an action brought under its provisions, the court shall award both injunctive relief, statutory damages, as specified, unless this specific provision regarding statutory damages is deemed by a court to be invalid or unconstitutional. In this instance, the bill provides that a court shall award statutory damages based on certain, enumerated factors.

This bill provides that no relief shall be awarded if the defendant demonstrates that the defendant previously paid the full amount of any monetary award in a previous action for each weapon or firearm precursor part, and that actions under the bill’s provisions be brought within four years of the cause of action accruing.

This bill specifies who has standing to bring a suit under its provisions and which defenses may and may not be asserted in such actions.

This bill provides that it shall not be construed to impose liability on any speech or conduct protected by the First Amendment, and that an action brought under its provisions shall not be subject to a special motion to strike under California's anti-SLAPP statute.

This bill provides that a defendant against whom an action is brought does not have standing to assert the right of another individual to keep and bear arms under the Second Amendment to the United States Constitution as a defense to liability unless either of the following is true:

- The United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of other individuals in state court as a matter of federal constitutional law; or
- The defendant has standing to assert the rights of other individuals under the tests for third-party standing established by the United States Supreme Court.

This bill authorizes a defendant to assert an affirmative defense to liability under the preceding section if both of the following are true:

- The defendant has standing to assert the third-party right of an individual to keep and bear arms in accordance with the preceding provision; and
- The defendant demonstrates that the relief sought by the claimant will violate a third-party's rights under the Second Amendment to the United States Constitution right as defined by clearly established case law of the United States Supreme Court.

This bill clarifies that its provisions do not authorize the initiation of a cause of action against a person purchasing, obtaining, or attempting to purchase or obtain an assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part from a person acting in violation of this law.

This bill establishes rules regarding venue and transfer of venue for actions brought under its provisions.

This bill includes various governmental immunity and severability provisions.

This bill provides that its provisions shall become inoperative upon the invalidation of Subchapter H (commencing with Section 171.201) of Chapter 171 of the Texas Health and Safety Code (SB 8) in its entirety.

COMMENTS

Note: This analysis only covers provisions of this bill within the Committee's jurisdiction. For an analysis of other issues, see the analysis prepared by the Senate Judiciary Committee.

1. Need for This Bill

According to the author:

Violent, gun-related crime is skyrocketing across the state. In 2020, California accounted for 65% of all ghost guns seized by the Bureau of Alcohol, Tobacco and Firearms. A recent Los Angeles Times [article](#) highlighted the problem the LAPD faces regarding ghost guns:

- As of mid-October, the rapid proliferation of ghost guns in LA had contributed to more than 100 violent crimes, including 24 killings and eight attempted homicides, as well as other violent offenses.
- During the first half of the year, LAPD had confiscated 863 ghost guns, a nearly 300% increase over the 217 it seized during the same period last year. Since 2017, the department has seen a 400% increase in ghost gun seizures.
- As a result the LAPD has declared a “ghost gun epidemic” in Los Angeles.

In the Bay Area, the problem is no better. According to a San Jose Mercury News [article](#):

- In Oakland, 23% of the roughly 1,200 firearms seized by police officers last year were ghost guns, according to the Oakland Police Department.
- Last year, San Francisco police seized 194 such guns as of Dec. 7 — accounting for 20% of all guns seized by the department. That number has risen fast in recent years — just six such guns were seized by San Francisco police in 2016, and no such guns were recovered in 2015.

While a law regulating the sale of firearm parts sometimes used to assemble ghost guns is set to go into effect on July 1, 2022, bolder action is necessary to end the proliferation of these weapons. [...] Continuing California’s record as a pioneer in commonsense gun reform, SB 1327 offers a new tool to combat the rise in gun violence and save lives – a private enforcement scheme. Modeled on the structure of Texas’ SB 8, this bill allows private citizens to sue anyone who, within California, manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any firearm lacking a serial number required by law, assault weapon, .50 BMG rifle, or firearm precursor part, subject to certain exceptions, as specified.

By enacting its abortion ban, Texas is knowingly infringing upon a well-established constitutional right. The right to have an abortion is enshrined in *Roe v. Wade* and *Planned Parenthood v. Casey*. However, while the Supreme Court recognizes an individual constitutional right to bear arms (*District of Columbia v. Heller*), it certainly does not recognize a constitutional right to own, manufacture, or sell an illegal assault weapon or ghost gun. It is likely that under the US Constitution, that California has the right to ban ghost guns and assault weapons. SB 1327 simply creates an enforcement mechanism for our own laws, not flagrantly infringing upon an existing constitutional right.

In a just world, a woman's right to choose would be sacrosanct, and California's people would be protected from ghost guns and assault weapons. Sadly, common sense was turned on its head when the Supreme Court allowed Texas's egregious ban on most abortion services to remain in place. SB 1327 takes advantage of this flawed logic and creates an enforcement mechanism for our own laws aimed to protect all Californians and save lives – not flagrantly infringing upon an existing constitutional right.

2. Replicating the Texas Model

As indicated by the Author, this bill replicates the framework of a recent Texas law, known as the “Texas Heartbeat Act (the ‘Act’),” which outlaws abortion after a fetal heartbeat has been detected or can be detected, usually around 6 weeks into a pregnancy. The Act also allows any person, except for a state official or entity, to sue someone who performs, induces or aids and abets an abortion, and incentivizes this private enforcement by authorizing statutory damages of at least \$10,000 if a defendant is found liable.¹ By eliminating the role of state officials in enforcing the law, the Act effectively insulated itself against constitutional challenge and circumvented the standard set by the United States Supreme Court in *Roe v. Wade* (1973), 410 U.S. 113. One commentator described the law's framework and the precedent it sets as an act of “diabolical genius.”²

Despite its apparent immunity from direct constitutional challenge, the Act immediately faced a host of other legal challenges, primarily from Texas abortion providers and the United States government³. Texas abortion providers and other parties opposing the Act filed a lawsuit seeking to stay enforcement of the law pending judicial review of its sovereign immunity provisions. On August 30, 2021, the day before the law was set to go into effect, these providers made another attempt to block the law, filing an application for an emergency injunction with the United States Supreme Court. The next day, the Court denied the motion, but several Justices, including Chief Justice Roberts, dissented, concluding that “the consequences of approving the state action, both in this particular case and as a model for action in other areas, counsel at least preliminary judicial consideration before the program devised by the State takes effect.”⁴ The abortion providers' primary case against the Act was still set to proceed, with oral arguments set for November 1, 2021.⁵

On October 27, the Firearms Policy Coalition, a gun rights advocacy organization, filed an amicus brief with the Court, criticizing “Texas's cavalier and contemptuous mechanism for shielding from review potential violations of constitutional rights as determined by this Court's

¹ Texas Health and Safety Code §171.201 et. seq.

² Marcus, Ruth. “The handling of the Texas abortion case is an embarrassment for the federal judiciary.” *The Washington Post*. 21 January 2022. <https://www.washingtonpost.com/opinions/2022/01/21/conservative-judges-resist-supreme-court-abortion-rule/>

³ The federal government's case against the Act became *United States v. Texas* (2021) 595 U.S. ____; in December 2021, the Supreme Court dismissed the government's case as being improvidently granted.

⁴ *Whole Woman's Health v. Jackson*, 594 U.S. ____ (2021) on Application for Injunctive Relief; Dissent of Chief Justice Roberts, joined by Justice Breyer and Justice Kagan, pp. 2-3. https://www.supremecourt.gov/opinions/20pdf/21a24_8759.pdf

⁵ Oral arguments in *United States v. Texas* occurred the same day.

precedents.”⁶ The brief echoed and expanded on the concern expressed by Chief Justice Roberts in his prior dissent:

To the extent this tactic is effective at evading or outright blocking pre-enforcement review, while allowing the significant and largely decisive deterrent to persist unless and until a direct application of the law is reviewed by this Court, it will easily become the model for suppression of other constitutional rights, with Second Amendment rights being the most likely targets of such suppression.⁷

Ultimately, in early December, the Supreme Court held by the slimmest majority that a pre-enforcement challenge to the Act may proceed only against a very limited group of possible defendants, but did not address the constitutionality of the law itself.⁸ A dissent filed by Justice Sonia Sotomayor underscored the potential chilling effect the decision – and the potential future legislation it spawns elsewhere - will likely have on other constitutional rights, a concern that was later echoed by various legal critics and commentators.⁹

Whether this bill runs afoul the Second Amendment, or any other constitutional requirement, is an issue that is sure to be litigated should the measure reach the Governor’s desk. Moreover, it is a question that will likely be influenced by factors beyond a purely legal analysis of the measure’s consistency with the constitutional right to keep and bear arms.¹⁰ Nevertheless, even a cursory comparison of this bill and the Texas Heartbeat Act reveals a clear legal distinction: while the latter clearly runs afoul current Supreme Court doctrine regarding abortion, it is not as clear that this bill violates the Court’s Second Amendment doctrine. To reiterate the Author, “while the Supreme Court recognizes an individual constitutional right to bear arms, it certainly does not recognize a constitutional right to own, manufacture, or sell an illegal assault weapon or ghost gun.”

3. The Status of California’s Assault Weapons Laws

California’s ban on assault weapons was enacted over three decades ago, with the Roberti-Roos Assault Weapons Control Act of 1989 (AWCA), which prohibited the possession and transfer of over 50 specific brands and models of semi-automatic firearms.¹¹ The law was augmented in 1999 to restrict acquisition and transfer of magazines that could hold more than 10 rounds of ammunition.¹² In 2004, AB 50 (Koretz, Ch. 494, Stats. of 2004), also known as the .50 Caliber BMG Regulation Act of 2004 effectively banned the sale of all .50 BMG-caliber rifles in the

⁶ *Whole Women’s Health v. Jackson* (2021), Brief of Firearms Policy Coalition As *Amicus Curiae* In Support of Granting Certiorari. Filed October 27, 2021, p. 14. https://www.supremecourt.gov/DocketPDF/21/21-463/197205/20211021195907665_Firearms%20Policy%20Coalition%20Amicus%20Brief.pdf

⁷ *Id* at 5.

⁸ *Whole Woman’s Health v. Jackson* (2021) 142 S. Ct. 522, 530.

https://www.supremecourt.gov/opinions/21pdf/21-463_3ebh.pdf

⁹ For instance – Chemerinsky, Erwin. “Op-Ed: Supreme Court decision on Texas abortion law puts all of our constitutional rights in jeopardy.” *Los Angeles Times*. 10 December 2021.

<https://www.latimes.com/opinion/story/2021-12-10/supreme-court-decision-texas-abortion>

¹⁰ That right is guaranteed by the Courts decision in *District of Columbia v. Heller* (2008) 554 U.S. 570; still, it is unclear what political factors or jurisprudential principles may influence the Court’s willingness to hear a challenge of this bill, should it reach that point.

¹¹ Penal Code §§30500 et. seq.

¹² SB 23 (Perata), Ch. 129, Stats. of 1999; Firearms and magazines that were legally owned when the law went into effect were grandfathered if they were registered with DOJ.

state by including such weapons within the definition of “assault weapon.” SB 118 (Committee on Budget, Ch. 29, Stats. of 2020), 2020’s public safety budget trailer bill, further expanded the definition of “assault weapon” to include semiautomatic centerfire firearms that are not pistols, shotguns or rifles, and do not have a fixed magazine, but do have other specific features.¹³

In addition to defining which weapons constitute prohibited assault weapons, existing law imposes various penalties for various conduct related to these weapons. Specifically, any person who manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, with limited exception, is guilty of a felony.¹⁴ Possession of an assault weapon is a wobbler. Recent legislation authorized a prosecutor, in lieu of criminal prosecution for possession of an assault weapon, to institute a civil action for an injunction, fine, and destruction of the firearm as a nuisance.¹⁵

Since their enactment, California’s assault weapons ban and its related provisions have been the subject of several legal challenges.¹⁶ Most recently, a group of plaintiffs challenged specific provisions of the ban in federal court in Southern California, alleging that the “prohibited features” definition of an “assault weapon,” and its related criminal penalties, violate the Second Amendment.¹⁷ Finding in favor of the plaintiffs, Judge Roger Benitez of the U.S. District Court of the Southern District of California issued a permanent injunction prohibiting enforcement of the challenged provisions. Judge Benitez opened the 94-page decision by comparing an AR-15 assault rifle to a pocketknife, stating that the weapon is “good for both home and battle.”¹⁸ He went on to write, “this is an average case about average guns used in average ways for average purposes.”¹⁹ On June 21, 2021, a panel of judges from the Ninth Circuit Court of Appeal granted a request by Attorney General Rob Bonta to extend a stay of the lower court’s injunction pending appeal.²⁰ If the Ninth Circuit affirms the trial court’s decision, the types of rifles that fall into the definition of “assault weapon” could be significantly limited. However, another recent Ninth Circuit decision related to California’s ban on high-capacity magazines suggest that the court may in fact reverse the lower court’s decision in *Miller*.²¹

4. Duplication of Penal Code Provisions

As mentioned above, the definition of “assault weapon” in existing law includes a wide array of firearm types and specifications, and is primarily governed by Sections 30510, 30515 and 30530 of the Penal Code. The definition of “firearm precursor part” is governed by Section 16531. Rather than defining “assault weapon” and “firearm precursor part” via cross reference, this bill

¹³ Penal Code §30515(a).

¹⁴ Penal Code §30600.

¹⁵ Penal Code §30800, enacted by AB 879 (Gipson), Ch. 730, Stats. of 2019.

¹⁶ *Kasler v. Lockyer* (2000) 23 Cal.4th 472; *Harrott v. County of Kings* (2001) 25 Cal.4th 1141; *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002)

¹⁷ *Miller v. Bonta*, Case No.: 19-cv-1537-BEN (JLB) (S.D. Cal. Jun. 4, 2021); the “prohibited features” definitions is codified at Penal Code §30515(a)(1)-(8).

¹⁸ *Id.* at 1.

¹⁹ *Id.* at 2.

²⁰ The Ninth Circuit is also considering a separate challenge to California’s assault weapons ban in *Rupp v. Bonta* (CASE NO. 8:17-cv-00746-JLS-JDE). The 9th Cir. Is likely waiting for the United States Supreme Court decision in *New York State Rifle Pistol Association, Inc. v. Bruen* before ruling on either *Miller* or *Rupp*, as that case has broad Second Amendment implications.

²¹ See *Duncan v. Bonta*, No. 19-55376 (9th Cir. 2021).

incorporates the full text of these sections verbatim. This bill does not alter or amend the definition of “assault weapon.” The primary purpose for this duplication is to prevent a change in the bill’s applicability should the final judgement in *Miller v. Bonta* limit the scope of what constitutes an assault weapon. That is, if the trial court’s decision in that case is ultimately upheld, the provisions of this bill would still apply to “assault weapons” as they are defined under current law. Additionally, provisions in this bill related to certain requirements of the Department of Justice do not create new responsibilities for the department, as those responsibilities have already been established by existing law.²²

5. Interaction with Existing Law and Pending Legislation Regarding Precursor Parts and Unserialized Firearms

Effective July 1, 2022, AB 879 (Gipson, Ch. 730, Stats. of 2019) established a new regulatory framework related to firearm precursor parts, requiring, among other things, all such parts to be sold through a licensed vendor.²³ Under that legislation, the sale of precursor parts is regulated in much the same manner as the sale of ammunition.²⁴ AB 879 also prohibits the sale of firearm precursor part to a person under 21 years of age and specified prohibited persons, and forbids possession of a precursor part by specified prohibited persons. This bill creates no new prohibitions related to the mere possession of a firearm precursor part (or assault weapon), but does prohibit a range of other conduct, including the manufacture, distribution, transport and possession or offering for sale of a firearm precursor part. Consequently, this bill prohibits a significant degree of conduct that is permitted under existing law, and for which a new regulatory system has recently been created. For instance, AB 879 required DOJ to begin accepting applications for precursor part vendor licenses on April 1, 2022, and regulations for the implementation of AB 879 were adopted by DOJ on the same day. Should this bill pass, approved licensees can only practically engage in the sale of precursor parts until it takes effect on January 1, 2023, or risk exposing themselves to significant civil liability. Similarly, while this bill authorizes licensed firearm dealers to take possession of lawfully possessed precursor parts for the purposes of servicing and repair, it prohibits the transport of such parts except by licensed firearm vendors. Thus, a lawful owner of a precursor part who transports that part to a firearms dealer for repair would conceivably be civilly liable under the provisions of this bill, as would the owner’s friend who drives them to the dealer or elsewhere without knowing that the precursor part is in the vehicle.

AB 1621 (Gipson) is currently pending in the Assembly and makes significant changes to existing Penal Code provisions related to precursor parts and the serialization of firearms and precursor parts. Specifically, AB 1621 makes the following revisions:

- Redefines “firearm precursor part”²⁵ for the purposes of the Penal Code and establishes a definition for “unserialized firearm precursor part.”
- Extends the definition of a firearm to include a firearm precursor part for the purposes of most criminal and regulatory provisions related to the possession, sale, and transfer of a

²² PC §§ 30315(d)(3) and 16531(b)

²³ Penal Code §§30400 et. seq., 30412.

²⁴ Ammunition is regulated by PC §§30210-30395, and many of the provisions are similar in structure and effect to those related to firearm precursor parts.

²⁵ AB 1621 defines “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.”

firearm, including provisions which do not apply to a frame or receiver under existing law.

- Prohibits the sale, transfer or possession of an unserialized firearm precursor part, except as specified.
- Prohibits the possession, import, manufacture or assembly of an unserialized firearm, except as specified, and establishes criminal liability for some of this conduct.
- Repeals most of the provisions established by AB 879, including existing restrictions on the sale and possession of precursor parts, and the framework authorizing such parts to be sold through licensed vendors.

If both AB 1621 and this bill are enacted, several questions may arise as to how to reconcile differences in the type of liability imposed for specific conduct related to precursor parts and unserialized firearms and precursor parts. Specifically, there may be confusion arising from the inconsistency between the bills' definitions of "firearm precursor part." In general, it is fair to say that this bill's prohibitions related to precursor parts and unserialized firearms are more far-reaching than those created by AB 1621, which allows parties currently in possession of an unserialized firearm or precursor part to avoid penalties by applying to the DOJ for a serial number.

6. Related Legislation – AB 1594 (Ting)

AB 1594 (Ting), also known as the Firearm Industry Responsibility Act, is currently pending in the Assembly. That measure would require a "firearm industry member," as defined, who engages in certain conduct related to "firearm-related products," as defined, to establish reasonable controls and take reasonable precautions to ensure that they do not sell or provide a firearm-related product to a downstream distributor or retailer who fails to take such measures. Additionally, the bill would prohibit a firearm industry member from manufacturing, marketing, importing, or offering for wholesale or retail sale, a firearm-related product that is likely to create a substantial and unreasonable risk of harm to public health and safety. Like this bill, AB 1594 authorizes private civil enforcement of its provisions, though only when the enforcing party has suffered harm. However, unlike this bill, AB 1594 also authorizes enforcement by the Attorney General and specific city and county attorneys.

7. Argument in Support

According to the Consumer Attorneys of California:

Under California law, it is a felony to manufacture, distribute, transport, or import into the state most assault weapons or .50 BMG rifles. In 2020, California accounted for 65% of all ghost guns seized by the Bureau of Alcohol, Tobacco and Firearms. As of October 2021, in Los Angeles alone, ghost guns were used in 24 murders, eight attempted murders, 60 assaults with deadly weapons, and 20 armed robberies. While a law regulating the sale of firearm parts sometimes used to assemble ghost guns is set to go into effect on July 1, 2022, action is necessary to end the proliferation of these weapons.

A law is only as good as its enforcement. Bills that provide a consumer enforcement remedy (also known as a private right of action) are exponentially more impactful than the vast majority of bills that do not. Bills that provide consumers with their own

remedies give Californians an active role in enforcing their rights. Consumer legal rights are essential to ensure the important laws we pass in California are being followed since government enforcement is often limited due to resources.

SB 1327 will allow Californians to help stop the spread of these weapons and recover damages of at least \$10,000 for each weapon involved as well as attorney's fees. The bill offers this remedy in addition to existing law enforcement measures such as a prosecutor's ability to enforce gun laws.

8. Argument in Opposition

According to Gun Owners of California, Inc.:

We understand that the impetus for this bill emanates from Governor Newsom's frustration with the Supreme Court ruling that allows a Texas abortion law to stand while legal challenges continue. His response has been to pursue legislation that would open the door to lawsuits against manufacturers or sellers of assault weapons and supposed ghost guns parts.

In short, SB 1327 would make legal gun manufacturers liable for the illegal act of another. Not only is it firmly unconstitutional – given that the 2nd Amendment is explicitly spelled out in the Bill of Rights, but it's also a clear violation of federal law. In 2005, Congress passed The Protection of Lawful Commerce in Arms Act specifically for this reason – to protect the firearm industry from lawsuits that target the actual gun rather than the person whose finger was on the trigger. The act does not protect anyone who commits a crime, only those involved in the legal commerce of a legal product.

Just as it would be improper to sue an automobile manufacturer – or more to the point, the owner of a winery – for a fatal drunk driving crime after imbibing there, it is equally inappropriate to sue a lawful gun maker for engaging in lawful commerce. The same logic would apply to the makers and sellers of eating utensils such as forks and spoons, because they lead to overeating and the possible deadly consequences of heart disease or diabetes. Further, since "assault weapons" are currently prohibited in California, giving the green light to sue when "that something" is already illegal seems redundant at best. Plus, there is no evidence that such policy would put a chill on gun violence. Even a casual examination of the Department of Justice's 2020 Firearms Used in the Commission of Crimes Report indicates the number of occasions that a California defined assault weapon was used in the commission of a crime is miniscule. Thus, this bill is nothing more than a punitive strike against those who legally manufacture a product that other people don't like.

-- END --