
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 452 **Hearing Date:** April 18, 2023
Author: Blakespear
Version: March 20, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms*

****Analyzed as proposed to be amended****

HISTORY

Source: Brady Campaign and Brady Campaign California

Prior Legislation: AB 876 (Gabriel, 2021), held in Assembly Appropriations
AB 2847 (Chiu), Ch. 292, Stats. of 2020
AB 2733 (Harper, 2018), failed in Assembly Public Safety
AB 1471 (Feuer), Ch. 572, Stats of 2007
SB 15 (Polanco), Ch. 248, Stats. of 1999

Support: Everytown for Gun Safety Action Fund

Opposition: None known

PURPOSE

The purpose of this bill is to prohibit, commencing January 1, 2027, licensed firearm dealers from selling, offering, exchanging, giving or transferring a semiautomatic pistol unless the pistol has been verified as a microstamping-enabled pistol. The bill also makes it a crime for a person to modify a microstamping-enabled pistol, as specified, and establishes several regulatory requirements for the DOJ related to the bill's microstamping provisions.

Existing law sets forth a definition of “unsafe handgun” for both revolvers and pistols.

- A revolver meets the definition of “unsafe handgun” if it 1) does not have a safety device that causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge, 2) does not meet the firing requirements for handguns, as specified, or 3) does not meet the drop safety requirement for handguns.
- A pistol meets the definition of “unsafe handgun” if 1) it does not have a positive manually operated safety device, as specified, 2) it does not meet the firing requirement for handguns, 3) it does not meet the drop safety requirement for handguns, 4) it does not have a chamber load indicator, 5) it does not have a magazine disconnect mechanism if it has a detachable magazine, or 6) it is not designed and equipped with a microscopic array

of characters used to identify the pistol, as specified (see more below). (Penal Code § 31910(a), (b).)

Existing law provides that a pistol meets the definition of unsafe handgun if it is not designed and equipped with a microscopic array of characters used to identify the make, model, and serial number of the pistol, etched or otherwise imprinted in one or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired. (Penal Code § 31910(b)(6)(A).)

Existing law provides that the Attorney General may also approve a method of equal or greater reliability and effectiveness in identifying the specific serial number of a firearm from spent cartridge casings discharged by that firearm than that which is set forth in existing law, to be thereafter required where the Attorney General certifies that this new method is also unencumbered by any patent restrictions. Approval by the Attorney General shall include notice of that fact via regulations adopted by the Attorney General for purposes of implementing that method (Penal Code § 31910(b)(6)(B).)

Existing law includes definitions of “drop safety requirement for handguns” and “firing requirement for handguns.” (Penal Code §§31900, 31905.)

Existing law requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Penal Code, § 32010(a).)

Existing law requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Penal Code, § 32015(a).)

Existing law provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code § 32015, subd. (b)(1).)

Existing law sets forth procedures related to the retesting and removal of handguns on the roster of handguns that are not unsafe. (Penal Code §§32020, 32025.)

Existing law provides that the Department of Justice shall, for each semiautomatic pistol newly added to the roster of “not unsafe” handguns, remove from the roster exactly three semiautomatic pistols lacking one or more specified safety features and added to the roster before July 1, 2022. (Penal Code §31910(b)(7).)

Existing law provides that a person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends an unsafe handgun shall be guilty of a misdemeanor. (Penal Code §32000 (a)(1).)

Existing law provides that the failure to report to the DOJ the sale or transfer of an unsafe handgun, as specified, may be subject to a civil penalty, and that in addition to any criminal penalty, the unlawful sale or transfer of an unsafe handgun obtained pursuant to specified provisions of existing law may be subject to a civil penalty, as specified. (Penal Code §32000(a)(2), (3).)

Existing law establishes various exemptions to the prohibition above for specified firearms and use of unsafe handguns by law enforcement agencies. (Penal Code §32000(b).)

Existing law prohibits a licensed gun dealer from processing a sale or transfer of an unsafe handgun between a person who has obtained it pursuant to an exemption and a person who is not authorized to possess one pursuant to an exemption. (Penal Code §32000(c).)

This bill sets forth the following definitions:

- “Microstamping component” means a component part of a semiautomatic pistol that will produce a microstamp on at least one location of the expended cartridge case each time the pistol is fired.
- “Microstamping-enabled pistol” means a semiautomatic pistol that contains a microstamping component installed by its manufacturer or by a person licensed by the state, an association, a partnership, a corporation, or another entity in compliance with standards established by the Department of Justice or its designee.
- “Semiautomatic pistol” means a pistol, as defined in existing law, that has an operating mode that uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger.

This bill provides that on or before July 1, 2025, the DOJ shall provide written guidance concerning qualifying criteria and performance standards for microstamping components.

This bill provides that on or before July 1, 2026, the DOJ shall establish processes and standards for the training and licensure of persons, associations, partnerships, corporations, or other entities so that those entities may engage in the business of servicing semiautomatic pistols and their components to ensure compliance with specified requirements within the bill.

This bill provides that on or before July 1, 2026, the DOJ shall designate a state body to facilitate the service of semiautomatic pistols and their components to ensure compliance with specified requirements within the bill.

This bill requires DOJ to adopt rules or regulations that may be necessary or proper to carry out the provisions above.

This bill provides that, commencing July 1, 2027, it shall be unlawful for a licensed firearms dealer to sell, offer for sale, exchange, give, transfer, or deliver any semiautomatic pistol unless the pistol has been verified as a microstamping-enabled pistol.

This bill specifies that violations of the above prohibition against the sale of a nonmicrostamping-enabled pistol shall be punishable as follows:

- For a first violation, by a fine of not more than one thousand dollars.
- For a second violation, by a fine of not more than five thousand dollars and the possible revocation of the dealer's license to sell firearms.
- For a third violation, by a misdemeanor and revocation of the dealer's license.

This bill provides that a person who modifies a microstamping-enabled pistol or microstamping component with the intent to prevent the production of a microstamp is, for a first offense, guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, and for a second or subsequent offense, is guilty of a misdemeanor punishable by imprisonment in the county jail of not more than one year, by a fine of not more than two thousand dollars (\$2,000), or by both that fine and imprisonment.

This bill provides that, for the purposes of the above prohibition, it shall not be unlawful to replace the microstamping component of a microstamping-enabled pistol when the component is damaged or in need of replacement with another valid microstamping component for the safe use of the firearm or replacing a microstamping component for a legitimate sporting purpose.

This bill specifies that the prohibitions above shall not apply to a pistol manufactured prior to their effective date.

This bill provides that the microstamping requirement of the Unsafe Handgun Act sunsets on January 1, 2027.

COMMENTS

1. Need for this bill

According to the Author:

Microstamping is a reliable, cost-effective tool that imprints a unique code on shell casings fired from a firearm, providing law enforcement with valuable information to identify shooters and gun traffickers. This innovative technology enables law enforcement to identify the source of a crime gun and would allow for more effective investigations into homicides and other firearm-related crimes.

Gun-related incidents are driving the increase in violent crime within the state and across the country. In 2021, the percentage of statewide gun crimes solved by law enforcement was only 40%, including only 55% for homicides. SB 452 will help state and local law enforcement solve crimes, break cycles of gun trafficking, and increase

trust in law enforcement by ensuring investigations are based on evidence rather than potential bias. This legislation will break the stalemate that has existed since 2007, and finally ensure CA law enforcement has this tool to solve gun crime.

2. Firearm Microstamping Technology

“Microstamping” is a ballistics identification technology that uses laser engraving to imprint unique markings onto the firing pin of a firearm, which, when the gun is fired, are transferred to the cartridge casing. The markings that constitute the microstamp imprinted on the spent cartridge include specific information about the make and model of the gun that fired it, which can assist law enforcement in tracing the gun back to its owner. A microstamp on a spent shell casing works much the same way as a license plate on an automobile, which provides law enforcement a simple and direct method for tracing a vehicle to its registered owner.

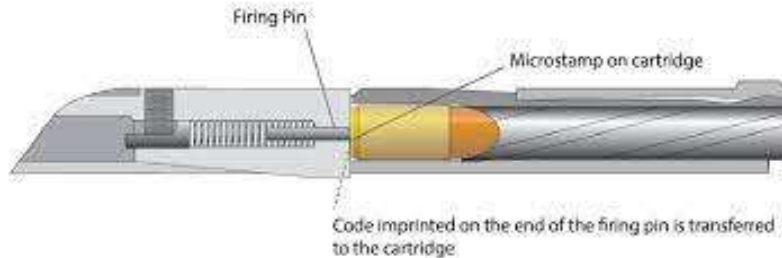


Image Source: <https://efsgv.org/learn/policies/microstamping/>



Microstamp imprinted on a spent cartridge

Image source: <https://efsgv.org/learn/policies/microstamping/>

Microstamping has been lauded by gun reform advocates who argue that, by linking cartridge cases recovered at crime scenes to the gun that fired them, the technology has the potential to reduce gun violence by improving the solve rate of gun-related crimes.¹ Conversely, detractors of the technology – the firearm industry, primarily – argue that it is expensive (the cost of which

¹ “Microstamping and ballistics.” Giffords Law Center to Prevent Gun Violence.
<https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/microstamping-ballistics/>

would ultimately be borne by consumers), inconsistent in real-world application, and easily and quickly circumvented with common hand tools.² Opponents also underscore the high volume of illegal ghost guns in circulation which are not equipped with the technology and thus cannot be traced. The true efficacy of applied microstamping technology in the real world is difficult to ascertain, as state laws requiring the use of the technology have either not yet gone into effect or have not yet certified a firearm capable of microstamping.

3. California's Unsafe Handgun Law and Microstamping Requirement

In 1999, the Legislature passed SB 15 (Polanco, Ch. 248, Stats. of 1999), also known as the Unsafe Handgun Act (UHA), which made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, with certain specific exceptions. SB 15 defined an "unsafe handgun" as a handgun that (1) does not meet a specified "drop safety" test, (2) does not meet specified firing tests, and (3) does not have a requisite safety device.³ The law also required DOJ to compile and publish a roster listing all of the handguns and concealable firearms that they deem "not unsafe" and which are certified for sale in the state.⁴ A subsequent reform, enacted in 2003, added new design safety requirements for semiautomatic pistols.⁵

In 2007, the Legislature enacted AB 1471 (Feuer, Ch. 572, Stats. of 2007), which made microstamping capability a prerequisite for any semiautomatic pistol not already designated a safe handgun to be placed on the DOJ roster. That measure defined microstamping capability as "a microscopic array of characters that identify the make, model and serial number of the pistol, etched in 2 or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired."⁶ AB 1471 delayed implementation of the microstamping prerequisite until January 1, 2010, "provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions." On May 17, 2013, the DOJ certified the microstamping technology required by AB 1471.⁷

Between 2013 and 2020, no new handgun models incorporating microstamping technology were introduced to the California market, as manufacturers asserted that they lacked the capacity to microstamp cartridges from two places on the interior of the firearm, as required by AB 1471.⁸ Thus, in 2020, the Legislature passed AB 2847 (Chiu, Ch. 292, Stats. of 2020), which required microstamp markings in just one place on the interior of a firearm.⁹ However, since AB 2847 went into effect on July 1, 2022, no new firearm models equipped with microstamping technology have been introduced to the California market.

² "Micro-stamping." National Rifle Association – Institute for Legislative Action. <https://www.nraila.org/get-the-facts/micro-stamping-and-ballistic-fingerprinting/>.

³ Penal Code §§ 31900, 31905, 31910

⁴ Penal Code §32015

⁵ SB 489 (Scott, Ch. 500, Stats. of 2003) requires that for a new semiautomatic center-fire pistol firearm to be added to the roster it has to be equipped with a chamber load indicator and a magazine disconnect (if it has a detachable magazine).

⁶ Penal Code § 31910(a)(6)(A).

⁷ [Bureau of Firearms Information Bulletin 2013-BOF-03: Certification of Microstamping Technology Pursuant to Penal Code Section 31910, Subdivision \(b\)\(7\)\(A\)](https://www.firearms.gov/bulletin/2013-BOF-03-Certification-of-Microstamping-Technology-Pursuant-to-Penal-Code-Section-31910-Subdivision-(b)(7)(A))

⁸ <https://www.latimes.com/local/lanow/la-me-ln-smith-wesson-microstamping-law-20140123-story.html#axzz2rLgnuhU8>

⁹ AB 2847 also required that for every safe new gun introduced in California, three unsafe guns on the roster that had been 'grandfathered' in would be removed from the roster.

4. Recent Legal Challenges

California's microstamping requirement, and the UHA more broadly, have been the focus of several legal challenges, two of which have seen rulings in just the past few weeks. In 2018, a challenge to several provisions of the UHA, including the microstamping requirement, failed when the Ninth Circuit Court of Appeals ruled, under the relevant legal test at the time, that the requirement was reasonably tailored to address the substantial problem of untraceable bullets at crime scenes and the value of a reasonable means of identification.¹⁰ However, a recent United States Supreme Court decision, *New York State Rifle and Pistol Association v. Bruen* (2022), 142 S.Ct. 2111, established a new test for determining whether a law comports with the Second Amendment's right to bear arms. Under that test, in defense of a law regulating firearms, the government must show more than that the regulation promotes an important governmental interest – rather, the law must be “consistent with this Nation's historical tradition of firearm regulation.”

Under this new test, two federal judges in California have independently struck down key provisions of the UHA, including the microstamping requirement. In the first decision, issued on March 20, Judge Cormac Carney of the Central District of California blocked the chamber load indicator, magazine disconnect mechanism and microstamping provisions of the UHA from being enforced, concluding that “no handgun available in the world has all three of these features,” and that “the technology effectuating microstamping on a broad scale is simply not technologically feasible and commercially practical.”¹¹ Just eleven days later, on March 31, Judge Dana Sabraw of the Southern District of California issued a similar ruling. In blocking the same three provisions of the UHA, as well as the provision requiring unsafe firearms that had been ‘grandfathered’ onto the DOJ roster to be systematically removed, Judge Sabraw held that “the State is unable to show that the UHA's [...] requirements are consistent with the Nation's historical arms regulations.”¹² As explained below, this bill establishes a new microstamping requirement for semiautomatic pistols that is entirely divorced from the UHA framework.

5. Effect of This Bill

While California's existing microstamping requirement operates exclusively within the framework of the Unsafe Handgun Act and what firearms are deemed “not unsafe,” this bill creates a separate and distinct restriction on the sale or transfer of *any* semiautomatic pistol by a licensed gun dealer unless the pistol has been verified as a “microstamping-enabled pistol,” as defined by the bill. However, the restriction does not go into effect until July 1, 2027. The bill sets forth a series of increasing penalties for violations of this restriction, with the first violation resulting in a fine not exceeding \$1,000, the second violation resulting in a maximum fine of \$5,000 and possible revocation of a dealer's license, and a third violation punishable as a misdemeanor and resulting in the revocation of a dealer's license. A separate prohibition makes it a misdemeanor to modify a microstamping-enabled pistol or microstamping component – defined as a part that will produce a microstamp on at least one location of an expended cartridge – with the intent to prevent the production of a microstamp, with an exception for actions taken

¹⁰ *Pena v. Lindley* (2018), 898 F.3d 969, 982-986.

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https://storage.courtlistener.com/recap/gov.uscourts.cacd.858747/gov.uscourts.cacd.858747.60.0_1.pdf

¹² https://www.saf.org/wp-content/uploads/2023/03/gov.uscourts.casd_692378.80.0.pdf

to repair a pistol's ability to produce a microstamp. The bill specifies that these restrictions only apply to pistols manufactured on or after July 1, 2027.

To prepare the California firearm market for this restriction on new non-microstamp enabled pistols, this bill directs the DOJ, on or before July 1, 2025, to provide written guidance concerning qualifying criteria and performance standards for microstamping components, and, by July 1, 2026, to establish processes and standards for the training and licensure of persons and other entities that may engage in the business of servicing microstamping enabled pistols. The provisions of this bill are largely modeled after a New York law passed in 2022, which does not go into effect until 2024.¹³

The bill may benefit from greater clarity in a couple key areas. First, although the bill defines major terms such as “microstamping component,” “microstamping-enabled pistol,” and “semiautomatic pistol” for the purpose of its provisions, it does not include a definition of the more fundamental term, “microstamp.” While the concept of a “microstamp” may be easily and commonly understood, especially among those familiar with these issues, what constitutes a compliant microstamp for the purposes of this bill should be clarified, notwithstanding the provision of the bill directing DOJ to develop performance standards for microstamping components. Without such clarity, firearm manufacturers may be able to comply with the bill without providing key information on the microstamp which would aid in criminal investigation and public health research. Such a definition would also greatly aid DOJ in developing its written guidance on microstamping components, as required under the bill. Additionally, the bill directs the DOJ, by July 1, 2026, to “designate a state body to facilitate the service of semiautomatic pistols and their components.” New York’s law contained the same directive. However, it is unclear exactly what this state body, new or existing, would be responsible for given a related directive to DOJ requiring the department to provide for the licensure of private businesses to service the weapons. The Author may wish to provide additional guidance on the relationship between these two provisions and the specific duties of the ‘state body’ at issue.

It should also be noted that this bill will also likely face constitutional challenges on similar grounds to those described above. Although the microstamping requirements of this bill are distinct from the UHA, and would not be subject to the preliminary injunction issued by Judge Cormac if they were to become law, they will continue to be vulnerable to claims that they infringe upon an individual’s right to bear arms under the Second Amendment as long as gun manufacturers decline to develop and sell microstamping-enabled pistols in California.

6. Amendments to be Taken in Committee

The Author intends to take two clarifying amendments in committee, which are reflected in this analysis:

- Adding a provision to the microstamping requirement in the Unsafe Handgun Act (Penal Code § 31910(b)(6)) to provide for the sunset of that requirement on January 1, 2027.
- Adding a provision to this bill to clarify that its provisions do not apply to a pistol manufactured prior to the effective date of specified prohibitions. Thus, the restrictions in the bill would not apply to a firearm manufactured before July 1, 2027, but only to new semiautomatic pistols.

¹³ Senate Bill S4116A, codified at N.Y. Exec. Law § 837-w and N.Y. Penal Law §265.38

7. Argument in Support

According to Brady Campaign, the bill's sponsor:

SB 452 would work to address gun violence directly by uplifting and investing in microstamping—an effective, reliable, available, and inexpensive technology, that allows law enforcement officers to accurately link bullet casings found at crime scenes to the firearm they were discharged from. As the majority of homicides in American cities remain unsolved, this innovative tool will allow law enforcement to more effectively identify and trace crime guns through intentional markings, help law enforcement rely on technology rather than bias and ultimately prevent violence.

SB 452 would greatly enhance law enforcement's ability to solve gun crimes, by taking a different approach to ensure that new handguns sold in California incorporate microstamping technology. It will remove microstamping from the UHA, and will instead create a standalone mandate for microstamping technology to be incorporated in all new semi-automatic handguns sold or otherwise transferred by licensed firearms dealers in California, beginning on July 1, 2027 and creates three pathways for dealers to do this through:

- Gun manufacturers
- State licensed vendors
- The California Department of Justice

In line with this, SB 452 also will require the Department of Justice to set standards for microstamping technology and for training and licensing entities that may engage in the business of servicing semi-automatic handguns to ensure compliance with the law, and to designate a state agency to facilitate the service of semi-automatic handguns to ensure that the required technology is available.

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