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December 14, 2016

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VIA U.S. MAIL, FAX, AND EMAIL

Re: The California Department of Justice's Failure to Provide Adequate Notice of Its Regulations re: Firearms Affected by Assembly Bill 1135 and Senate Bill 880, and Its Violation of California's Administrative Procedure Act

Chief Lindley:

We write on behalf of our clients, the National Rifle Association (NRA), the California Rifle and Pistol Association (CRPA), as well as the hundreds of thousands of Californian firearms dealers, instructors, and owners that comprise their membership.

As of the date of this letter, there is less than one month before the new "assault weapon" laws stemming from Assembly Bill ("AB") 1135 and Senate Bill ("SB") 880 go into effect. And our clients and their members have little legal guidance beyond the code sections and the recent "FAQs" provided by the California Department of Justice ("DOJ"). But even these "FAQs" provide little to no guidance concerning how to comply with pending law.

We had hoped that DOJ would have provided more adequate guidance before this late date. Our expectation was based, in part, on the facts that: DOJ knew as early as July 1, 2016 that Californians cannot *fully* comply with the new "assault weapon" laws until DOJ implements clarifying regulations; and DOJ had enough time to implement such regulations through the "standard" Administrative Procedure Act ("APA") process, which would have given Californians adequate notice of said regulations and, therefore, the guidance they are sorely lacking now.

Instead, due to groundless delay, DOJ has no other option but to invoke the APA's "emergency" regulation process for some of this much-needed analysis. This is exceedingly

problematic because DOJ does not meet an exemption to the APA process, no "emergency" exists, and DOJ's actions will result in regrettable damages to Californians seeking to comply with the new laws.

Hence, we write to express our clients' concerns over DOJ's failure to provide sufficient notice for its regulations regarding firearms affected by AB 1135 and SB 880. Additionally, because no actual emergency exists to justify the promulgation of emergency regulations, and because no other exemption to the APA process applies to DOJ, we write to alert DOJ that it may have violated the APA.

I. UNLESS IT CAN UTILIZE THE APA'S "EMERGENCY" REGULATION PROCESS, DOJ MUST ABIDE BY THE "STANDARD" APA PROCESS BECAUSE NO OTHER EXEMPTION APPLIES TO DOJ

As a preliminary matter, DOJ is required to comply with the APA's requirements when it comes to issuing certain regulations pertaining to firearms affected by AB 1135 and SB 880. AB 1135 and SB 880 both allow for the creation of regulations exempt from the APA, but this exemption to the APA process is limited only to regulations covering the process to register "assault weapons."[1] In other words, any regulations beyond the scope of Penal Code section 30900, subdivision (b) would require compliance with the APA. Therefore, because the clarifying regulations at issue in this letter go beyond the scope of Penal Code section 30900, DOJ must abide by the "standard" APA process or, if there is a genuine emergency, by the "emergency" regulation process.

Here, because the new laws will take effect on January 1, 2017, DOJ has no choice now but to go the route of the "emergency" regulation process. However, as shown below, this is improper.

II. DOJ CANNOT UTILIZE THE APA'S "EMERGENCY" REGULATION PROCESS: DOJ HAD AMPLE TIME TO ACT VIA THE APA'S "STANDARD" PROCESS, AS IT KNEW AS EARLY AS JULY 1, 2016 THAT CLARIFYING REGULATIONS WERE NEEDED FOR AB 1135 AND SB 882

DOJ (or any person reading the new code sections) knew as of July 1, 2016 that the following provisions added/amended by AB 1135 and SB 880 are vague in certain areas: the definitions of "assault weapon;" the means by which a person may keep a firearm affected by AB 1135 and SB 880; and the requirements to register these newly designated "assault weapons." Pressing, problematic questions include, but are not limited to, "what constitutes 'disassembly of the action' for purposes of defining a 'fixed magazine'?" This question needs to be answered to provide Californians guidance as to what firearms need to be registered after January 1, 2017 and which firearms can be sold by firearm manufacturers, distributors, and dealers from 2017 forward on the basis that they do not meet the new definitions of "assault weapon."

Therefore, it was known that Penal Code sections 30515 and 30680, due to their vagueness, require DOJ's implementation of regulations in order to allow Californians to properly register and, thus, keep firearms affected by AB 1135 and SB 880. *Since July 1, 2016*, when AB 1135 and SB 880 were chaptered into law, it was understood that DOJ would soon implement such regulations. Yet, for

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[1] *See* Penal Code section 30900(b)(5) (effective January 1, 2017), referring to subdivision (b) of Penal Code section 30900 outlining the requirements for registering firearms as "assault weapons."

whatever reason, DOJ irreparably delayed in doing so, even though it knew more than five months ago that it needed to give people sufficient time to comply with the new "assault weapon" law before the January 1, 2017 deadline. Because the need to draft those clarifying regulations existed and was known by DOJ "in sufficient time to have been addressed through nonemergency regulations," DOJ needs to justify its "failure to address the situation through nonemergency regulations."[2]

From all appearances, it cannot do so. There is nothing to excuse DOJ's delay. AB 1135 and SB 880 are identical and were signed by Governor Brown on July 1, 2016. Accordingly, DOJ had sufficient time to draft, propose, receive public comment, and revise the regulations pursuant to those public comments before the laws take effect January 1, 2017. DOJ's failure to act in a timely manner neither is, nor creates, an emergency to bypass the usual notice and hearing/comment procedures set forth in the APA for the issuance of regulations by DOJ. "The term 'emergency' has been given a practical, commonsense meaning in the California case law: '[E]mergency has long been accepted in California as an *unforeseen situation calling for immediate action.* [Citations.] This is the meaning of the word that obtains in the mind of the lawyer as well as in the mind of the layman.'"[3] Here, DOJ's need to create regulations for firearms affected by AB 1135 and SB 880 cannot be said to be an "unforeseen situation calling for immediate action." (*Id.*) To the contrary, DOJ knew from the adoption of the law in July 2016 that it has six months to propose necessary regulations. So any "emergency" DOJ speaks of is one of its own making. It was not "unforeseen." Consequently, no emergency exists to warrant "emergency regulations," and DOJ should have abided by the APA's usual notice and hearing/comment procedures and given Californians sufficient guidance on how to comply with the new "assault weapon" laws.

III. As a Result, Californians Are Harmed by DOJ's Failures to Properly Abide by APA Requirements and Provide Sufficient Notice of Its Regulations

Because DOJ's "emergency" regulations would only give Californians a handful of days to conduct transactions and/or modifications, DOJ is not giving Californians sufficient notice to lawfully modify or acquire firearms affected by AB 1135 and SB 880. Hence, DOJ is, alarmingly and unjustifiably, causing Californians substantial concern and/or legal detriment by not clarifying or defining terms in the pending laws.

For instance, until questions like "what constitutes 'disassembly of the action' for purposes of defining a 'fixed magazine'?" are answered through the DOJ's regulations, Californians do not have a full understanding of how to comply with the new "assault weapon" laws taking effect on January 1, 2017 and do not have fair notice of what conduct on their part will render them liable to the corresponding criminal penalties. Californians can only guess at how they can comply with the law, and there is no way for a person of common intelligence to know which guess is best, as DOJ has not

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[2] See *Emergency Regulations Adoption Process*, Office of Administrative Law, http://www.oal.ca.gov/emergency_regulation_process.htm (last visited Dec. 1, 2016) (citing Cal. Govt. Code § 11346.1, subd. (b)(2).)

[3] *Doe v. Wilson* (1997) 57 Cal.App.4th 296, 306 (quoting *Sonoma Cnty. Org. of Public/Private Employees, Local 707, SEIU, AFL-CIO v. County of Sonoma* (1991) 1 Cal.App.4th 267, 276-277) (double emphasis added.)

indicated the positions it intends to take with its regulations. As an example even if Californian dealers honestly *think* that they made sufficient modifications to the firearm as suggested in DOJ's FAQs to comply with the new laws, certain firearms sitting on their shelves will still become "assault weapons" on January 1, 2017, causing the unsuspecting dealers to lose their firearm property and face criminal prosecution when law enforcement enters their store.

In addition, individuals who need at least 10 days to purchase a firearm affected by AB 1135 and SB 880 will find themselves out of luck when they purchase firearms that they *think* are California Compliant, only to find out too late that the DOJ's regulations classify the firearms as "assault weapons" and require them to have been purchased before 11:00pm on December 21, 2016. Such individuals must then forfeit their money for such expenses as restocking fees and background check fees that could have been avoided had they known not to buy the firearm in the first place. Or, take the example of a civilian who has a firearm affected by AB 1135 and SB 880 and needs some time to modify it so that it complies with the new "assault weapon" laws.

In these and many more instances, DOJ's delay causes Californians to lose their firearm and monetary property (and in some cases, their freedom due to criminal prosecution), even though such deprivation of property could have *easily* been avoided had DOJ given sufficient notice of what needs to be done to comply with the new "assault weapon" laws.

Unfortunately, this is not the first time DOJ failed to timely provide regulatory guidance. In 2015, during the implementation of the firearm safety certificate requirements, DOJ promulgated emergency regulations months after the requirements became law. The *permanent* regulations were put in place two years after the law was signed by the governor and almost a year after the code sections requiring the regulations were California law.

Also, as of today, DOJ has yet to promulgate or provide any information/regulations concerning AB 2220 (Daly 2014), which allows for the acquisition and possession of firearms by "private patrol operators" (i.e., security companies). It provides neither much-needed information for the law, nor pertaining to its delay in furnishing information, despite the law being signed by Governor Brown in 2014 and becoming California law on July 1, 2016.

DOJ's pattern of behavior further indicates that any "emergency" yet again appears to be one of DOJ's own making.[4] There was sufficient time for DOJ to draft and publish clarifying regulations for firearms affected by AB 1135 and SB 880. Instead, as of the drafting of this letter, Californians received no information concerning any DOJ-promulgated regulations, emergency or otherwise, for these new laws potentially affecting tens of thousands of Californians. DOJ does not seem to care that citizens who get their analysis of California law wrong are subject to criminal prosecution for their error.

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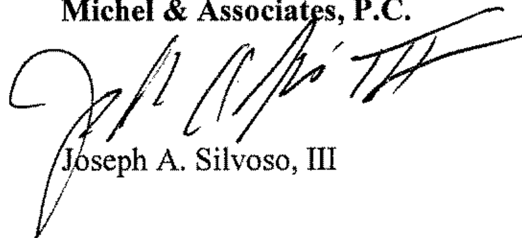
[4] *Sinaloa Lake Owners Ass'n v. City of Simi Valley* (9th Cir. 1989) 882 F.2d 1398, 1406, overruled on other grounds by *Armendariz v. Penman* (9th Cir. 1996) 75 F.3d 1311 (also noting that "due process violations might arise if 'a pattern of abuse and arbitrary action were discernible from review of an agency's administration of a summary procedure' [citation omitted]).

In the end, we hope that this letter shows DOJ that it had the power to provide sufficient guidance by promulgating timely regulations, and that its groundless delay alone forced it to declare an emergency in issuing regulations governing firearms affected by AB 1135 and SB 880. There is no justification for DOJ's failure to give Californians proper notice of its intended regulations.

Given DOJ's failure to provide guidance, it falls to the firearm community to come up with its own answers to the questions left open by DOJ's failure to act. One of these questions extends to the definition of "disassembly of the firearm action," which is a key component in the new definition of "assault weapon" under California law. Our office, in the vacuum of DOJ's response, drafted our own analysis and definition of that key term. We attach it for purposes of clarifying our position relating to that term.

Sincerely,
Michel & Associates, P.C.



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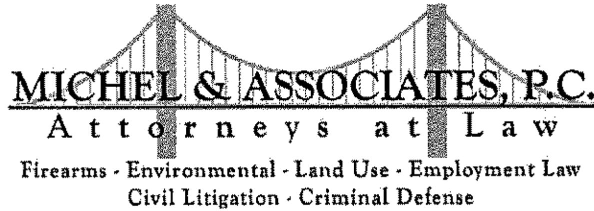

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MEMORANDUM OF LAW

Re: Defining the Term "Disassembly of the Firearm Action" As Used In Assembly Bill 1135 and Senate Bill 880 Relating to "Assault Weapons"

Date: December 12, 2016

I. ISSUE

As a result of Assembly Bill No. 1135 ("AB 1135") and Senate Bill No. 880 ("SB 880"), beginning January 1, 2017, any semiautomatic, centerfire rifle (or any semiautomatic pistol) that does not have a fixed magazine and is also equipped with certain "prohibited" features will be labeled an "assault weapon" under California law, making their possession and/or transfer generally prohibited in California.[1] The term "fixed magazine," as used in the newly enacted provisions, is defined as "an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action."[2]

Noticeably absent from the recently enacted legislation, however, is a definition for the term "disassembly of the firearm action." As a result, a question has arisen whether newly designed magazine disconnect devices such as the "Patriot Mag Release" "ARMagLock," and other similar devices which when installed on an AR-15 style firearm require the upper receiver to be partially separated from the lower receiver in order to disconnect the firearm's magazine, will allow firearm owners to continue to possess and transfer their firearms which would otherwise be labeled as "assault weapons."

[1] A.B. 1135, 2015-2016 Sess. (Cal. 2016); S.B. 880, 2015-2016 Sess. (Cal. 2016).

[2] *Id.*

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II. SHORT ANSWER

Use of devices, such as the Patriot Mag Release and ARMagLock, which require the upper receiver to be pivoted forward in order for the magazine to be released constitute "disassembly of the firearm action" for purposes of AB 1135 and SB 880. Thus, California firearm owners that incorporate such devices into their firearms can continue to possess and transfer their firearms in compliance with California law because firearms equipped with such devices cannot be labeled "assault weapons."

III. ANALYSIS

On July 1, 2016, California Governor Jerry Brown signed into law AB 1135 and SB 880, two identical bills which amend California's definition of an "assault weapon." As is always the case, firearms considered to be "assault weapons" are generally civilian semiautomatic firearms incapable of fully-automatic fire, and are prohibited not because they function differently or have more stopping power than other popular semiautomatic firearms, but because of their appearance, name, or cosmetic characteristics.

A. Overview of California "Assault Weapon" Law

It is important to understand that the great majority of California's laws relating to "assault weapons" remain unchanged following the enactment of AB 1135 and SB 880. California first enacted a law prohibiting "assault weapons" in 1989, which has since been amended on several occasions. The law, labeled the "Roberti-Roos Assault Weapons Control Act," prohibited specific makes and models of firearms, as well as AR and AK "series" rifles.[3] These firearms have been and will still be prohibited as "assault weapons" following AB 1135 and SB 880's changes.

In 1999, Senate Bill No. 23 ("SB 23") expanded California's definition of an "assault weapon" to include specific semiautomatic firearms equipped with certain "prohibited" features. Many of SB 23's restrictions are unaffected by AB 1135 and SB 880, and will continue to be enforced after January 1, 2017. Of those restrictions that remain unaffected, these include:

- A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds;
- A semiautomatic, centerfire rifle that has an overall length of less than 30 inches;

[3] CAL. PENAL CODE § 30510.

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- A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds;
- A semiautomatic shotgun that has both (1) a folding or telescoping stock and (2) a pistol grip, thumbhole stock, or vertical handgrip;
- A semiautomatic shotgun that has the ability to accept a detachable magazine; and,
- Any shotgun with a revolving cylinder.

Cal. Penal Code §§ 30515(a)(2-3), 30515(a)(5-8) .

B. Effect of AB 1135 and SB 880

What AB 1135 and SB 880 did change is the definition of an "assault weapon" as applied to specific rifles and pistols. Under current California law, the following are considered "assault weapons:"

- A semiautomatic, centerfire rifle that *has the capacity to accept a detachable magazine*[4] *and* any one of the following:
  A pistol grip that protrudes conspicuously beneath the action of the weapon,
  thumbhole stock,
  folding or telescoping stock,
  grenade or flare launcher,
  flash suppressor, or
  forward pistol grip.
- A semiautomatic pistol that *has the capacity to accept a detachable magazine and* any one of the following:
  A threaded barrel,
  second handgrip,

[4] The term "detachable magazine" is defined as "any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required." CAL. CODE REGS, tit. 11, § 5469(a). For the purposes of this definition, a bullet or ammunition cartridge is considered a tool. *Id.* Further, the term "ammunition feeding device" includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine. *Id.*

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shroud that partially or completely encircles the barrel (with the exception of a slide), or
the capacity to accept a detachable magazine at some location outside of the pistol grip.

Cal. Penal Code §§ 30515(a)(1), 30515(a)(4) (emphasis added).

Beginning January 1, 2017, these restrictions will now read:

- A semiautomatic, centerfire rifle that ***does not have a fixed magazine but has*** any one of the following:
  A pistol grip that protrudes conspicuously beneath the action of the weapon,
  thumbhole stock,
  folding or telescoping stock,
  grenade or flare launcher,
  flash suppressor, or
  forward pistol grip.

- A semiautomatic pistol that ***does not have a fixed magazine but has*** any one of the following:
  A threaded barrel,
  second handgrip,
  shroud that partially or completely encircles the barrel (with the exception of a slide), or
  the capacity to accept a detachable magazine at some location outside of the pistol grip.

As used in the revised definition, the term "fixed magazine" is defined as "an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action." The purpose of this change is to prohibit the future sale or transfer of firearms equipped with an aftermarket "magazine lock" device commonly referred to as a "bullet button."

One design of the bullet button replaces the standard one-piece magazine release button on a typical AR-15 style rifle or pistol with a two-piece assembly that cannot be operated with just the push of a

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finger, as the button is too small and recessed to be pressed without the use of a tool.[5] Because a tool is needed to release the magazine, the firearm is no longer considered to be equipped with a "detachable magazine," and is therefore no longer considered an "assault weapon" under current California law. Typically, California gun owners must equip AR and AK pattern rifles and pistols with such devices as they would otherwise be defined as an "assault weapon."

But with the changes under AB 1135 and SB 880, certain rifles and pistols equipped with "bullet buttons" can no longer be sold or transferred in California beginning January 1, 2017, because such firearms must now instead be equipped with a newly defined "fixed magazine" in order to avoid being classified as an "assault weapon." Individuals who currently own such firearms may continue to possess them provided they are registered with the California Department of Justice no later than January 1, 2018.

C. Newly Designed Magazine Locking Devices

Several manufacturers have already begun marketing and distributing devices that are purported to require disassembly of the firearm action in order to remove the magazine. These include the Patriot Mag Release,[6] ARMagLock,[7] and modified magazines such as the Franklin Armory 10 Round DFM.[8]

Both the Patriot Mag Release and ARMagLock are similar to the original "bullet button" design in that they replace the standard one-piece magazine release button found on typical AR-15 rifles and pistols. But unlike the "bullet button," the newly designed devices require the user of the firearm to at least partially separate the upper receiver from the lower receiver by disengaging the rear takedown pin and pivoting the upper receiver forward, thereby allowing the user to depress the button to release the magazine.[9]

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[5] Similar designs are available for various types of firearms other than AR-15 style rifles and pistols, including AK style rifles and pistols.

[6] http://www.bulletbutton.com/official-bullet-button-blog-news-updates-products-ar15-ak47/2016/7/5/new-patriot-mag-release-now-available-for-order.

[7] https://www.armaglock.com/.

[8] http://franklin-armory.myshopify.com/products/franklin-armory-10-round-dfm.

[9] The term "receiver" is not specifically defined under California law. However, the Attorney General stated that this is "[t]he basic unit of a firearm which houses the firing and breech mechanism and

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The Franklin Armory 10 Round DFM similarly require the user to at least partially separate the upper receiver from the lower receiver in order to remove the magazine. However, the part in question is a new magazine (not just a replacement part) that cannot be removed via a typical AR-15 magazine release button. Instead, the magazine can only be removed or loaded by separating the upper and lower receiver assembly and removing/reloading the magazine through the gap the separation creates.

These devices do in fact satisfy the requirement that the firearm be equipped with a "fixed magazine" under AB 1135 and SB 880.

D. Defining the Term "Disassembly of the Firearm Action"

No where in the California Penal Code or relevant Federal law is the term "disassembly of the firearm action" defined. As a result, we must look elsewhere for a definition, keeping in mind that any definition we use is not yet legally binding. For the purpose of this analysis, it is helpful to separate the term "disassembly" from the term "firearm action."

In both legal and common English usage, the term "disassemble" is consistently defined as "to take apart" or "to take to pieces."[10] Because this definition is so widely accepted and recognized, it is unlikely that the California Department of Justice or a court of law would hold differently.

The National Rifle Association defines "firearm action" as applied to pistols to mean "the collection of parts that serve to fire the gun," and as applied to rifles to mean "the moving parts that load,

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to which the barrel and stock are assembled. The receiver may consist of two sections. In some autoloading pistols and other firearms, the terms receiver and frame are used interchangeably." *Assault Weapons Identification Guide*, California Attorney General, https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/awguide.pdf? at 80 (3rd Ed., Nov. 2001). The Attorney General has also stated that an "upper receiver usually contains the barrel and breech mechanism of a firearm," whereas a "lower receiver usually contains the trigger and firing mechanism." *Id.* at 81. But because these definitions have been established outside the legal rulemaking process required for California State agencies, they are provided here only for reference and should not be considered to be legal definitions.

[10] GARNER'S DICTIONARY OF LEGAL USAGE (3d ed. 2011); FOWLER'S DICTIONARY OF MODERN ENGLISH USAGE (4th ed. 2015).

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fire, and unload the rifle."[11] Similarly, the Sporting Arms and Ammunition Manufacturer's Institute defines the term as "the combined parts of a firearm that determine how a firearm is loaded, discharged and unloaded."[12] Other sources have defined the term to mean the "working mechanism of a firearm involved with presenting the cartridge for firing, and in removing the spent casing and introducing a fresh cartridge."[13]

Regardless of the definition being used, it is reasonable to conclude that should any part of the firearm's action be missing, assembled incorrectly, or disassembled, the firearm would cease to function properly and be otherwise incapable of firing.

i. Extent of "Disassembly" Required

The pivotal issue rests on whether use of these new devices, such as the Patriot Mag Release and ARMagLock, constitutes "disassembly of the firearm action" making them compliant with AB 1135 and SB 880.

What constitutes "disassembly of the firearm action" for purposes of AB 1135 and SB 880 can be analyzed by looking at the plain meaning of the terms and legislative intent. As previously mentioned, to "disassemble," in its plain definition, means "to take apart." As applied here, when the rear takedown pin of firearms utilizing these devices is removed, it allows the upper receiver to hinge forward and separate itself from the lower receiver. It would be far-fetched to argue that such an action does not constitute "taking apart." In order for the firearm action to function properly, the upper and lower receiver rely on one another. The majority of the "moving parts" that function to load each cartridge is located in the upper receiver whereas the magazine itself is located in the lower receiver along with the firing pin. With the addition of a device like the Patriot Mag Release being placed on a firearm, the magazine cannot be removed unless and until the upper receiver of the firearm action is pivoted forward. Hence, the ammunition feeding device cannot be removed without "disassembly of the firearm action."

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[11] NAT'L RIFLE ASS'N, GUIDE TO THE BASICS OF PISTOL SHOOTING (2009); NAT'L RIFLE ASS'N, THE BASICS OF RIFLE SHOOTING (1987).

[12] SPORTING ARMS & AMMUNITION MFR.'S INST., NON-FICTION'S WRITER'S GUIDE: A WRITER'S RESOURCE TO FIREARMS AND AMMUNITION (1999).

[13] *Gun Glossary: Every Term You Could Possibly Need, In One Spot!*, CONCEALED NATION, http://concealednation.org/2015/05/gun-glossary-every-term-you-could-possibly-need-in-one-spot/ (last updated June 10, 2015).

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If use of devices such as the Patriot Mag Release and ARMagLock do not constitute "disassembly of the action," it would essentially mean that individuals using AR style rifles have to take apart each individual piece of the firearm action piece-by-piece just to release the magazine. Such a requirement is absurd, not necessary for removing the magazine in other "fixed magazine" firearms, and surely was not intended by the drafters of the legislation. The use of these devices in their present design assure that the magazine will remain locked in place unless and until the upper receiver and lower receiver, which combine to make the firearm action, are "taken apart" via the pivoting hinge.

Although the Department of Justice's "Final Statement of Reasons" from 2000 is in relation to SB 23, it helps provide guidance on the extent of disassembly in determining "disassembly of the firearm action." In reference to "disassembly of the firearm action," the Department of Justice agreed with the notion that only a *portion* of the firearm action needs to be disassembled.[14] Furthermore, the Department of Justice disagreed with the notion that the definition of "disassembly of the firearm action" lacked clarity, stating, "the definition is sufficiently clear without defining the extent of disassembly of the action."[15] It is safe to assume the legislature was aware of the simplicity involved in determining what constitutes "disassembly of the firearm action." When you take into consideration the essential fact that a firearm is incapable of being fired when the breech mechanism in the upper receiver is pivoted forward and separated from the firing mechanism, it is quite evident that when one piece cannot work without the other, the removal of one from the other constitutes a "disassembly."

The "Final Statement of Reasons" further states the Department added the phrase "without disassembly of the firearm action" as a result of the public comment stating there are firearms with fixed magazines that can be field stripped[16] without using any tools.[17] The inclusion of this statement points to an indication that the term "disassembly of the firearm action" was not meant to prohibit devices such as the Patriot Mag Release and ARMagLock, but rather make it possible for hunters and recreational gun users to use such AR style rifles without having to use a "tool" every time a magazine needed to be released while still maintaining compliance with the disassembly requirement.

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[14] Comment A1.25, *DOJ Regulations for Assault Weapons and Large Capacity Magazines*, Final Statement of Reasons (emphasis added).

[15] Comment B1.42, *DOJ Regulations for Assault Weapons and Large Capacity Magazines*, Final Statement of Reasons.

[16] Meaning "disassembled in the field."

[17] Section 978.20(a) Detachable Magazine, *DOJ Regulations for Assault Weapons and Large Capacity Magazines*, Final Statement of Reasons.

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ii. Disassembly of the "Firearm" Versus Disassembly of the "Action"

A possible counter argument is that in order to comply with the requirements of AB 1135 and SB 880, both the upper and lower receiver of a firearm will need to be completely separated in order to satisfy the definition of "disassembly of the firearm action." The argument would likely be based in the assumption that removing the rear takedown pin and pivoting the upper receiver forward does not satisfy the definition of "disassembly" because the upper and lower receiver as still connected. But this argument is without merit.

First, the law requires disassembly of the firearm's ***action***, not the firearm itself. Recall that the term "action," although not specifically defined under applicable law or regulations, constitutes only those parts that serve to fire the gun. Although the upper and lower receiver are two components necessary for an AR-15 style firearm to function properly, they are in no way considered to be the "action" of the firearm. Instead, these parts merely house the action.[18] By removing the rear takedown pin and pivoting the upper receiver forward, the bolt assembly (which contains the bolt and firing pin), the chamber, and barrel have been separated from the trigger and hammer, thereby breaking and AR-15 style firearm's action into two separate pieces, which clearly meets the definition of "disassembly."

A strong comparison to make here would be that of "break-action" or "hinge-action" firearm designs. The California Department of Justice has adopted the term "break-top long gun" as used in its Firearm Safety Certificate Program,[19] but has not specifically defined the term. But the National Rifle Association has stated that a "hinge action opens similar to the movement of a door hinge," and that when opened, "the barrel(s) swing downward away from the breech block."[20] By its very name, these firearm designs are breaking the ***action***, and would therefore satisfy any possible definition of the term "disassembly of the firearm action" as used in AB 1135 and SB 880. And because break-action firearms perform the same function, by breaking the firearm's action, as removing the rear takedown pin and pivoting the upper receiver forward on an AR-15 style rifle, so to would this procedure satisfy any possible definition of the term "disassembly of the firearm action."

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[18] See *Assault Weapons Identification Guide*, supra, defining the term "upper receiver" to "usually contain[] the barrel and breech mechanism" and the term "lower receiver" to "usually contain[] the trigger and ***firing mechanism***" (emphasis added).

[19] Cal. Code Regs, tit. 11, § 4257(b).

[20] NAT'L RIFLE ASS'N, THE BASICS OF RIFLE SHOOTING (1987).

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IV. CONCLUSION

Use of kits such as the Patriot Mag Release and ARMagLock surely constitute "disassembly of the firearm action" and will make AR style rifles that would otherwise be labeled assault rifles California compliant. A finding to the contrary would practically render AB 1135 and SB 880 as requiring a complete piece-by-piece disassembly of the firearm (i.e., breech mechanism, barrel, trigger, firing pin), which is completely irrational.

In the Senate Committee on Public Safety's analysis of AB 1135, they state, "it is not, however, the intent of the legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities."[21] Authors of AB 1135 and SB 880 are worried about the so-called "loophole" created by devices such as the "bullet button."[22] Supporters of SB 880 submit that what makes AR style rifles such an effective tool in mass murders is due to the rapid ability to reload magazines.[23] It is clear that by requiring "disassembly of the firearm action" the legislature seeks to reduce reload time in hopes of preventing tragic mass shootings. Even with use of the Patriot Mag Release and ARMagLock as they currently stand, reload time will be greatly increased, which will effectuate the drafters' intent. However, it will also provide law abiding gun users the ability for continued use of their AR style rifles while maintaining compliance with California's laws.

For Further Assistance:

For links to free information on firearms laws, the Legal Resources section of our www.calgunlaws.com website has subsections on various firearms law topics. Check it out!

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[21] S. COMM. ON PUBLIC SAFETY, 2015-2016 Reg. Sess.

[22] *See Comments to SB 880*, Senate Third Reading, May 17, 2016 ("SB 880 will make our communities safer and upholds our commitment to reduce gun violence in California by closing the bullet button loophole in the California's Assault Weapons Ban.").

[23] *See* A. COMM. ON PUBLIC SAFETY, 2015-2016 Reg. Sess., 10 (May 17, 2016).

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