

COPY

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

**PAULA FISCAL, LARRY P. BARSETTI, REBECCA KIDDER,
DANA K. DRENKOSKI, JOHN CANDIDO, ALAN BYARD,
ANDREW SIRKIS, NATIONAL RIFLE ASSOCIATION, SECOND
AMENDMENT FOUNDATION, CALIFORNIA ASSOCIATION OF
FIREARM RETAILERS, LAW ENFORCEMENT ALLIANCE OF
AMERICA, SAN FRANCISCO VETERAN POLICE OFFICERS
ASSOCIATION**

No.:A115018

Plaintiffs-Respondents,

vs.

**THE CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO
POLICE CHIEF HEATHER FONG in her official capacity, SAN
FRANCISCO POLICE DEPARTMENT**

Defendants-Appellants.

County of San Francisco Case No.: CPF05505960
The Honorable James Warren

**PLAINTIFFS/RESPONDENTS'
REQUEST FOR JUDICIAL NOTICE**

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FILED

OCT 15 2007

Court of Appeal - First App. Dist
DIANA HERBERT

By _____ DEPUTY

Attorneys for Petitioners/Respondents

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiffs-Respondents Paula Fiscal et al., hereby request that the court take Judicial Notice of the passage by the Legislature of Assembly Bill 1471, and that purpose of that proposed statute.

ASSEMBLY BILL 1471

Recently the California Legislature passed Assembly Bill (AB) 1471, entitled “the Crime Gun Identification Act of 2007.” A true and correct copy of Assembly Bill 1471 is attached herewith as Exhibit A. If signed by the Governor, AB1471 would amend the Unsafe Handgun Act. Specifically it would “expand the definition of “unsafe handgun” to include semiautomatic pistols that are not designed and equipped with 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.”

RELEVANCE

AB1471 requires handguns to stamp an imprint onto cartridge casings so that the number from a cartridge, found at a crime scene can be traced back to the gun, and hopefully from the gun to the criminal. It is a crime prevention measure, as is clearly indicated by the title of the bill: “the

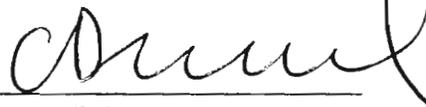
Crime Gun Identification Act of 2007.” One issue in this appeal is whether the Unsafe Handgun Act (UHA) is a consumer protection measure, a crime prevention statute, or both. The existence of AB1471 informs that debate, demonstrating that the UHA is, at least in part, intended as a crime prevention statute.

POINTS AND AUTHORITIES

Judicial Notice is available for legislation and legislative history under Evidence Code section 452(c). (*In re S.B.* (2004) 32 Cal.4TH 1287, 1296, fn. 3; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn 1.) Committee reports and letters from supporters of laws later enacted are judicially noticeable sources for understanding that legislation and its purposes. (*People v. Cruz* (1996) 13 Cal.4th 764, 774, fn. 5.)

DATED: October 10, 2007

TRUTANICH • MICHEL, LLP



C. D. Michel

Attorney for Plaintiffs/Respondents

EXHIBIT A

Assembly Bill No. 1471

Passed the Assembly September 10, 2007

Chief Clerk of the Assembly

Passed the Senate September 6, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 12126 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1471, Feuer. Firearms: microstamping.

Existing law defines unsafe handguns as failing to pass certain tests, or lacking certain features, as specified.

This bill, the Crime Gun Identification Act of 2007, would, commencing January 1, 2010, expand the definition of "unsafe handgun" to include semiautomatic pistols that are not designed and equipped with 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. Those provisions would be subject to specified certification procedures by the Department of Justice regarding the use of that technology.

By expanding the definition of "unsafe handgun," the manufacture, sale, and other specified transfer of which is a crime, this bill would expand the scope of an existing crime, and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited as, the Crime Gun Identification Act of 2007.

SEC. 2. Section 12126 of the Penal Code is amended to read:

12126. As used in this chapter, "unsafe handgun" means any pistol, revolver, or other firearm capable of being concealed upon

the person, as defined in subdivision (a) of Section 12001, for which any of the following is true:

(a) For a revolver:

(1) It does not have a safety device that, either automatically in the case of a double-action firing mechanism, or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge.

(2) It does not meet the firing requirement for handguns pursuant to Section 12127.

(3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

(b) For a pistol:

(1) It does not have a positive manually operated safety device, as determined by standards relating to imported guns promulgated by the federal Bureau of Alcohol, Tobacco, and Firearms.

(2) It does not meet the firing requirement for handguns pursuant to Section 12127.

(3) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

(4) Commencing January 1, 2006, for a center fire semiautomatic pistol that is not already listed on the roster pursuant to Section 12131, it does not have either a chamber load indicator, or a magazine disconnect mechanism.

(5) Commencing January 1, 2007, for all center fire semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it does not have both a chamber load indicator and if it has a detachable magazine, a magazine disconnect mechanism.

(6) Commencing January 1, 2006, for all rimfire semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it does not have a magazine disconnect mechanism, if it has a detachable magazine.

(7) Commencing January 1, 2010, for all semiautomatic pistols that are not already listed on the roster pursuant to Section 12131, it is not designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two 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, 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. 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 this paragraph, to be thereafter required as otherwise set forth by this paragraph 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 for purposes of this paragraph. The microscopic array of characters required by this section shall not be considered the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice, within the meaning of Sections 12090 and 12094.

(c) As used in this section, a "chamber load indicator" means a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.

(d) As used in this section, a "magazine disconnect mechanism" means a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.

(e) As used in this section, a "semiautomatic pistol" means a pistol, as defined in subdivision (a) of Section 12001, the operating mode of which 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.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2007

Governor

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802.

On October 12, 2007, I served the foregoing document(s) described as

**PLAINTIFFS/RESPONDENTS' REQUEST FOR
JUDICIAL NOTICE**

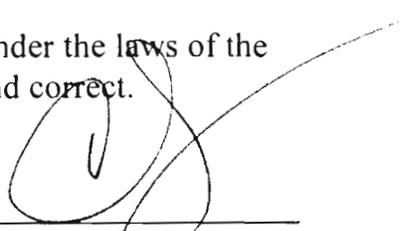
on the interested parties in this action by placing
[] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

“SEE ATTACHED SERVICE LIST”

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on October 12, 2007, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



CLAUDIA AYALA

PAULA FISCAL et al.,
v.
CITY AND COUNTY OF SAN FRANCISCO et al.,
CASE NO.: A115018

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