

## **EXHIBIT 1**

**SENATE RULES COMMITTEE**  
Office of Senate Floor Analyses  
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SB 1446

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THIRD READING

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Bill No: SB 1446  
Author: Hancock (D), et al.  
Amended: 3/28/16  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-3, 4/19/16  
AYES: Hancock, Leno, Liu, Monning  
NOES: Anderson, Glazer, Stone

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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**SUBJECT:** Firearms: magazine capacity

**SOURCE:** Author

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**DIGEST:** This bill, commencing July 1, 2017, prohibits the possession of large-capacity magazines, as specified.

**ANALYSIS:**

Existing law:

- 1) Banned the possession of “assault weapons” and “large capacity ammunition feeding devices,” defined as a magazine capable of holding more than 10 rounds of ammunition, manufactured after that date. That law, the federal assault weapons law (the Violent Crime Control and Law Enforcement Act, H.R. 3355, Pub.L. 103-322,) became effective on September 13, 1994, expired in 2004 and has not been reenacted.
- 2) Defines a “large-capacity magazine” as any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:
  - a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

- b) A .22 caliber tube ammunition feeding device.
  - c) A tubular magazine that is contained in a lever-action firearm. (Penal Code § 16740.)
- 3) Provides that, except as specified, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment for 16 months, two or three years pursuant to Penal Code Section 1170(h). “Manufacturing” includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine. (Penal Code § 32310.)
- 4) Provides that, commencing January 1, 2014, any person in this state who knowingly manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large capacity magazine conversion kit is punishable by a fine of not more than \$1,000 or imprisonment in a county jail not to exceed six months, or by both that fine and imprisonment. This section does not apply to a fully assembled large-capacity magazine. A “large capacity magazine conversion kit” is a device or combination of parts of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine. (Penal Code § 32311.)
- 5) Provides that, upon a showing that good cause exists, the Department of Justice may issue permits for the possession, transportation, or sale between a licensed firearms dealer and an out-of-state client, of large-capacity magazines. (Penal Code § 32315.)
- 6) Provides that, except as specified, any large-capacity magazine is a nuisance and is subject to an injunction against its possession, manufacture or sale, and is subject to confiscation and summary destruction. (Penal Code § 32390.)

This bill:

- 1) Provides that, except as specified, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to

exceed \$100 upon the first offense, by a fine not to exceed \$500 upon the third or subsequent offense.

- 2) Requires that a person who, prior to July 1, 2017, legally possesses a large-capacity magazine dispose of that magazine by any of the following means:
  - a) Remove the large-capacity magazine from the state.
  - b) Prior to July 1, 2017, sell the large-capacity magazine to a licensed firearms dealer.
  - c) Destroy the large-capacity magazine.
  - d) Surrender the large-capacity magazine to a law enforcement agency for destruction.
- 3) Exempts the following:
  - a) An individual who honorably retired from being a sworn peace officer, as specified or an individual who honorably retired from being a sworn federal law enforcement officer, who was authorized to carry a firearm in the course of scope of that officer's duties, as specified.
  - b) A licensed gunsmith for the purpose of maintenance, repair or modification of the large-capacity magazine, as specified.
  - c) Any federal, state or local historical society, museum or institutional society, museum or institutional collection which is open to the public, provided that the large-capacity magazine is property housed, secured from unauthorized handling and unloaded.
  - d) Any person who finds the large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possessed the large-capacity magazine no longer than necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to the law.
  - e) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.
  - f) The receipt or disposition of a large-capacity magazine by a trustee of a trust, or an executor or administrator of an estate, including an estate that is subject to probate, that includes a large-capacity magazine.
  - g) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of



ammunition is compatible with that firearm and that person possesses the large-capacity magazine solely for use with that firearm.

- 4) Makes a number of conforming changes to the Penal Code.

### **Background**

Since January 1, 2000, California has banned the importation, manufacture or sale of high capacity magazines. (Penal Code §§ 32310, 32390.) These magazines have also been deemed a public nuisance and are, therefore, subject to confiscation and destruction, although this requires a prosecutor to obtain a civil injunction, which is costly and time-consuming. (Penal Code § 18010.) This bill imposes criminal penalties for possession of high capacity magazines in California.

According to a report released by the Violence Policy Center in December of 2015:

Since 1980, there have been at least 50 mass shootings (3 or more fatalities) where the shooter used high-capacity ammunition magazines. A total of 436 people were killed in these shootings and 425 were wounded. This number is likely a significant undercount of actual incidents since there is no consistent collection or reporting of this data. Even in many high-profile shootings information on magazine capacity is not released or reported.

([http://www.vpc.org/fact\\_sht/VPCshootinglist.pdf](http://www.vpc.org/fact_sht/VPCshootinglist.pdf).)

There were at least three mass shootings involving large-capacity magazines in 2015. On December 2, 2015, 14 people were killed and 21 were seriously injured in a mass shooting at the Inland Regional Center in San Bernardino, California. The perpetrators of this mass shooting used four high capacity magazines. In July of 2015, six people were killed (including the shooter) and two were wounded in a shooting at the Navy Operational Support Center and Marine Corps Reserve Center, in Chattanooga, Tennessee. The perpetrator used multiple 30-round magazines. On June 17, 2015, a shooting at the Emanuel African Methodist Episcopal Church, in Charleston, South Carolina, left nine people dead. The perpetrator used 13-round magazines. (*Id.*)

### **Comments**

#### *The Fifth Amendment “Takings” Clause*

The “takings clause” of the Fifth Amendment to the United States Constitution states: “nor shall private property be taken for public use without just compensation.” California law already bans the import, manufacture and sale of

high capacity ammunition magazines, and has declared them a nuisance and subject to confiscation and destruction. (Penal Code §§ 32310, 32390, 18010.) Nonetheless, the question has been raised whether adding criminal penalties for possession of these ammunition magazines would constitute a “taking of private property for public use without just compensation,” in violation of the Fifth Amendment.

The U.S. Supreme Court has recognized for well over a century a difference between legislative action that results in a taking of private property for public use through a process of eminent domain and a legitimate use of the police power of the state to protect the public health and welfare. In upholding a statute prohibiting the sale of alcohol, the Court stated:

The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner.

(*Mugler v. Kansas*, 123 U.S. 623, 668-669 (1887).)

Specifically in the context of the regulation of firearms, courts have held that prohibiting possession of dangerous weapons is a valid exercise of the government’s police power not to be confused with the power of eminent domain. In 1978, Washington, D.C. passed a law prohibiting the ownership of certain types of weapons, including those that could fire more than 13 rounds without reloading. The law was quickly challenged by a several gun owners who had legally purchased such weapons before the law went into effect and were thus required to dispose of them or be in violation of the law. They claimed this amounted to a taking by the government, without just compensation, in violation of the Fifth Amendment. The Court of Appeals for the District of Columbia held:

Petitioners’ third constitutional challenge alleges that D.C. Code 1978 Supp., § 6-1820(c) provides for a taking of their property without just compensation in violation of the Fifth Amendment. That section of the Code provides three alternatives for disposition within seven days of a firearm denied registration. The unsuccessful applicant may (1) “peaceably surrender” the firearm to the chief of police, (2) “lawfully remove” the firearm from the District for as long as he retains an interest in the firearm, or (3) “lawfully dispose” of his interest in the firearm. Petitioners’ argument is that the second and third alternatives require, under the terms imposed by the Federal Gun Control Act of 1968, 18



U.S.C. § 922 (1970), a quick “forced sale” of the firearms at less than fair market value to a dealer in firearms, while the first alternative would provide not even a salvage value return.

Assuming, arguendo, that the statute authorized a “taking,” we note that the Fifth Amendment prohibits taking of “private property . . . for public use, without just compensation.” Such a taking for the public benefit under a power of eminent domain is, however, to be distinguished from a proper exercise of police power to prevent a perceived public harm, which does not require compensation. *Lamm v. Volpe*, 449 F.2d 1202, 1203 (10th Cir. 1971). That the statute in question is an exercise of legislative police power and not of eminent domain is beyond dispute. The argument of petitioner, therefore, lacks merit.

(*Fesjian v. Jefferson*, 399 A.2d 861, 865-866 (1979).)

*Exception for Retired Peace Officers*

The assault weapons ban in California (AWCA) allowed law enforcement agencies to sell or transfer assault weapons to a sworn peace officer upon that officer’s retirement. This provision was challenged in *Silveira v. Lockyer*, 312 F.3d 1052 (9<sup>th</sup> Cir. 2002). The Ninth Circuit held:

We thus can discern no legitimate state interest in permitting retired peace officers to possess and use for their personal pleasure military-style weapons. Rather, the retired officers exception arbitrarily and unreasonably affords a privilege to one group of individuals that is denied to others, including plaintiffs.

In sum, not only is the retired officers’ exception contrary to the legislative goals of the AWCA, it is wholly unconnected to any legitimate state interest. A statutory exemption that bears no logical relationship to a valid state interest fails constitutional scrutiny. The 1999 AWCA amendments include, however, a severability provision providing that should any portion of the statute be found invalid, the balance of the provisions shall remain in force. Accordingly, because the retired officers’ exception is an arbitrary classification in violation of the Fourteenth Amendment, we sever that provision, § 12280(h)-(i), from the AWCA.

(*Id.* at 1091-92.)

Like the AWCA, this bill exempts retired sworn peace officers from the ban on the possession of large-capacity magazines.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:** (Verified 5/17/16)

American Academy of Pediatrics, California  
California Academy of Family Physicians  
California Chapter of the American College of Emergency Physicians  
California Chapters of the Brady Campaign to Prevent Gun Violence  
California Church IMPACT  
City of Long Beach  
City of Oakland  
City of Santa Monica  
Cleveland School Remembers  
Coalition Against Gun Violence  
Courage Campaign  
David Alvarez, Councilmember, City of San Diego  
Eric Garcetti, Mayor of the City of Los Angeles  
Law Center to Prevent Gun Violence  
Physicians for Social Responsibility  
Rabbis Against Gun Violence  
Violence Prevention Coalition of Greater Los Angeles  
Youth ALIVE!

**OPPOSITION:** (Verified 5/17/16)

California State Sheriffs' Association  
Firearms Policy Coalition  
Gun Owners of California  
National Rifle Association  
Outdoor Sportsman's Coalition of California  
Safari Club International Foundation  
The California Sportsman's Lobby

**ARGUMENTS IN SUPPORT:** According to the California Chapters of the Brady Campaign to Prevent Gun Violence:

Since January 2000, California law has prohibited the manufacture, importation, sale, gift, or loan of any large capacity ammunition magazine capable of holding more than ten rounds. SB 1446 is a narrow



bill that would add a prohibition on *possessing* large capacity magazines, as defined in the bill, regardless of the date the magazine was acquired. Current and retired police officers would be exempt from the prohibition.

Mass shootings involving large capacity magazines have demonstrated the tragic carnage caused by these magazines. The shooters in the recent San Bernardino tragedy as well as the gunmen in Santa Monica (2013), Fort Hood, Tucson, Aurora, and Newtown were able to injure or kill large numbers of people very quickly because of their ability to shoot a large number of bullets in a very short period of time. Jared Loughner, who was able to rapidly fire 31 bullets in 15 seconds without reloading, killed six people and wounded thirteen others in Tucson. The shooting ended when bystanders tackled the gunman while he was reloading. Nine year old Christina-Taylor Green was shot by the thirteenth bullet – had there been a magazine limit of ten rounds, she might be alive today.

California had a number of mass shootings involving large capacity ammunition magazines before the ban on their sale and transfer in year 2000 (in San Ysidro, Stockton, San Francisco and Orange). Other rampage shootings involving large capacity magazines have happened since then - and will happen again - because of the prevalence of large capacity magazines and the difficulty of enforcing existing law. It is nearly impossible to prove when a large capacity magazine was acquired or whether the magazine was illegally purchased after the 2000 ban. Furthermore, until 2014, magazine conversion kits were being sold in California. These kits, containing parts to repair large capacity magazines, were legally purchased and later assembled into new large capacity magazines. Since the possession of large capacity magazines is permissible, this practice, which clearly evaded the intent of the law, was able to increase the proliferation of large capacity magazines in the state. SB 1446 would enable the enforcement of existing law regarding large capacity magazines.

With average use, magazines typically last about twelve years. It is now time to end the grandfathering of large capacity magazines and exploitation of the law by prohibiting their possession. Serious hunters do not use large capacity magazines. A prohibition on the sale, transfer, and *possession* of large capacity magazines clearly furthers public

safety. The California Brady Campaign Chapters appreciate your introduction of SB 1446 and are in full support.

**ARGUMENTS IN OPPOSITION:** The Firearms Policy Coalition states in opposition to this bill:

Most firearms sold in America today, and certainly the highest by volume sold, such as AR-15s and semi-automatic handguns, come standard from the factory with magazines that hold more than ten rounds. Law enforcement agencies and peace officers purchase those same firearms with those same magazines because they are standard kit -- and, most importantly, because no one wants to be under-armed in a self-defense situation.

Furthermore, many magazines are altered and made "California Legal" at some point of manufacture. Given this, SB 1446 would immediately make most full size handguns inoperable as it bans any magazine that has been permanently altered to only accept 10 rounds or less, creating a taking of constitutionally protected property.

Many people have purchased permanently altered magazines to be compliant with California's ever growing body of law surrounding firearms and have based their consumer choices on this being the law of the land. Now the goal posts would appear to be moving yet again.

SB 1446 is simply an unconstitutional taking of personal property and an express infringement on the fundamental civil rights of all Californians. The measure creates significant criminal liability for items currently -- and lawfully -- possessed by hundreds of thousands, if not millions, of Californians. Depriving people of Constitutionally-protected civil rights by criminalizing the possession of items commonplace to gun owners is poor policy and invites litigation.

Even more disturbing, SB 1446 invites a deepening wedge between the police and non-police as it protects "honorably retired peace officers" from the dispossession of their personal property. This wanton violation of the 14th amendment to the United States Constitution creates a caste system of civilians- those who used to be police officers and those who weren't.

According to the federal civil rights case *Silveira v. Lockyer* (9th Cir. 2002), 312 F.3d 1052, retired peace officers are not allowed to maintain

the “assault weapons” they acquired through exemptions they held as active duty peace officers. When they became non-peace officers through separation from their employer, they became civilians.

The State will need to track all of the magazines purchased by peace officers, should they become former, retired or “honorably retired” to ensure the state’s expressed interest in controlling these firearms parts is met and can confiscate magazines from peace officers who retire early, resign, are fired or are otherwise not deemed “honorably retired”.

With no appropriation for outreach in SB 1446, and the untold millions of magazines in circulation, we fear widespread, inadvertent non-compliance and a revolving door of lives upended by the deluge of criminal prosecutions in every courthouse in the state as everyday people become overnight criminals. An appropriation today may save millions of dollars later as the inventory of these parts is significant and the outreach is non-existent, creating a potential wave of prosecutions of otherwise law abiding person whose only “crime” was possession of ammunition feeding devices (including those of 10 rounds or less) that were lawfully acquired.

Without pre-emption, firearms parts owners may be subject to a withering hail of statutes and ordinances aimed at them with different penalties depending on which jurisdiction prosecutes first. Ironically, some local laws are more severe than the proposed state statute.

Prepared by: Jessica Devencenzi / PUB. S. /  
5/19/16 10:37:24

\*\*\*\* END \*\*\*\*