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24 **UNITED STATES DISTRICT COURT**
25 **SOUTHERN DISTRICT OF CALIFORNIA**

26 SOUTH BAY ROD & GUN CLUB,
27 INC.; GARY BRENNAN, an
28 individual; CORY HENRY, an
individual; PATRICK LOVETTE, an
individual; VIRGINIA DUNCAN, an
individual; RANDY RICKS, an
individual; CITIZENS COMMITTEE
FOR THE RIGHT TO KEEP AND
BEAR ARMS; GUN OWNERS OF
CALIFORNIA; SECOND
AMENDMENT LAW CENTER; and
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED,

Plaintiffs,

v.

ROBERT BONTA, in his official
capacity as Attorney General of the
State of California; and DOES 1-10,

Defendants.

CASE NO: 3:22-cv-01461-RBM-WVG
REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION

Hearing Date: November 21, 2022
Courtroom: 5B
Judge: Hon. Ruth Bermudez Montenegro

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(Hertzberg-Portantino) – As Amended April 7, 2022, 2021-2022
Reg. Sess. (Cal. June 10, 2022) 6

Exhibit B - Senate Floor, Bill Analysis Re: SB 1327
(Hertzberg-Portantino) – As Amended June 23, 2022, 2021-2022
Reg. Sess. (Cal. June 28, 2022) 25

Exhibit C - Senate Pub. Saf. Comm., Bill Analysis Re: SB 1327
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Exhibit D -Assembly Floor, Bill Analysis Re: SB 1327
(Hertzberg-Portantino) – As Amended June 23, 2022, 2021-2022
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1 TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Under Federal Rule of Evidence 201, Plaintiffs South Bay Rod & Gun Club,
3 Inc. Gary Brennan, Cory Henry, Patrick Lovette, Virginia Duncan, Randy Ricks,
4 Citizens Committee for the Right to Keep and Bear Arms, Gun Owners of
5 California, Second Amendment Law Center, and California Rifle and Pistol
6 Association, Incorporated request that the Court take judicial notice of the
7 following documents in support of Plaintiffs' Motion for Preliminary Injunction:

8 1. **Assembly Judiciary Comm., Bill Analysis Re: SB 1327 (Hertzberg-**
9 **Portantino) – As Amended April 7, 2022, 2021-2022 Reg. Sess. (Cal. June 10,**
10 **2022).** A true and correct copy of this document is attached as **Exhibit A**. Exhibit A
11 is a public record of the California State Legislature that I accessed on or about
12 October 6, 2022, from [https://leginfo.legislature.ca.gov/faces/billSearch](https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml)
13 [Client.xhtml](https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml), the official California Legislative Information website, which
14 publishes official legal history and government documents saved in a fully
15 searchable, image-based format.

16 2. **Senate Floor, Bill Analysis Re: SB 1327 (Hertzberg-Portantino) –**
17 **As Amended June 23, 2022, 2021-2022 Reg. Sess. (Cal. June 28, 2022).** A true
18 and correct copy of this document is attached as **Exhibit B**. Exhibit B is a public
19 record of the California State Legislature accessed on October 6, 2022, from
20 [https://leginfo.legislature.ca.gov/faces/billSearch Client.xhtml](https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml), the official
21 California Legislative Information website, which publishes official legal history
22 and government documents saved in a fully searchable, image-based format.

23 3. **Senate Pub. Saf. Comm., Bill Analysis Re: SB 1327 (Hertzberg-**
24 **Portantino) – As Amended April 7, 2022, 2021-2022 Reg. Sess. (Cal. April 26,**
25 **2022).** A true and correct copy of this document is attached as **Exhibit C**. Exhibit C
26 is a public record of the California State Legislature accessed on October 6, 2022,
27 from [https://leginfo.legislature.ca.gov/faces/billSearch Client.xhtml](https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml), the official
28 California Legislative Information website, which publishes official legal history

1 and government documents saved in a fully searchable, image-based format.

2 4. **Assembly Floor, Bill Analysis Re: SB 1327 (Hertzberg-Portantino)**
3 **– As Amended June 23, 2022, 2021-2022 Reg. Sess. (Cal. June 24, 2022).** A true
4 and correct copy of this document is attached as **Exhibit D**. Exhibit D is a public
5 record of the California State Legislature accessed on October 6, 2022, from
6 [https://leginfo.legislature.ca.gov/faces/billSearch Client.xhtml](https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml), the official
7 California Legislative Information website, which publishes official legal history
8 and government documents saved in a fully searchable, image-based format.

9 A court shall take judicial notice of such a fact if requested by a party and
10 supplied with the necessary information. FED. R. EVID. 201(d). Judicial notice of
11 Exhibits A through D is proper because the documents for which this request is
12 made are “capable of accurate and ready determination by resort to sources who
13 accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b)(2). Indeed, “[a]
14 trial court may presume that public records are authentic and trustworthy.”
15 *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999) (taking judicial
16 notice of agency report).

17 What’s more, “[l]egislative history is properly a subject of judicial notice.”
18 *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012); *Chaker v. Crogan*,
19 428 F.3d 1215, 1223 n.8 (9th Cir. 2005) (discussing legislative history of California
20 statute). Here, the accuracy of all the public records subject to Plaintiffs’ Request
21 for Judicial Notice, consisting of legislative history, cannot reasonably be
22 questioned. Judicial notice of these records is therefore appropriate.

1 Respectfully submitted,

2 Dated: October 17, 2022

MICHEL & ASSOCIATES, P.C.

3 /s/ C.D. Michel

4 C.D. Michel
5 Counsel for Plaintiffs South Bay Rod & Gun
6 Club, Inc. Gary Brennan, Cory Henry,
7 Patrick Lovette, Virginia Duncan, Randy
8 Ricks, Gun Owners of California, Second
9 Amendment Law Center, and California
10 Rifle and Pistol Association, Incorporated
11 e-mail: cmichel@michellawyers.com

9 Dated: October 17, 2022

LAW OFFICES OF DON KILMER

10 s/ Don Kilmer

11 Don Kilmer
12 Counsel for Plaintiff Citizens Committee for
13 the Right to Keep and Bear Arms
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EXHIBIT A

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 1327 (Hertzberg and Portantino) – As Amended April 7, 2022

As Proposed to be Amended

SENATE VOTE: 24-10

SUBJECT: FIREARMS: PRIVATE RIGHTS OF ACTION

KEY ISSUES:

- 1) SHOULD CALIFORNIA LAW AUTHORIZE ANY PERSON IN THE STATE, OTHER THAN AN OFFICER OR EMPLOYEE OF A STATE OR LOCAL GOVERNMENT ENTITY, TO BRING A CIVIL ACTION AGAINST ANY OTHER PERSON IN THE STATE WHO KNOWINGLY TRAFFICS IN ILLEGAL FIREARMS, OR IN FIREARM PRECURSOR PARTS?
- 2) SHOULD PERSONS WHO ARE SUED PURSUANT TO THE BILL BE SUBJECTED TO STATUTORY FINES OF \$10,000 PER VIOLATION, AND BE SUBJECTED TO MULTIPLE LAWSUITS (AND MULTIPLE FINES) BY MULTIPLE PARTIES BASED UPON THE SAME ACT?
- 3) SHOULD ANY LITIGANT, INCLUDING AN ATTORNEY OR LAW FIRM REPRESENTING A LITIGANT, WHO SEEKS DECLARATORY OR INJUNCTIVE RELIEF TO PREVENT ENFORCEMENT OF ANY LAW, REGULATION, OR ORDINANCE REGULATING FIREARMS, BE JOINTLY AND SEVERALLY LIABLE FOR THE ATTORNEY’S FEES AND COSTS OF THE GOVERNMENT ENTITY DEFENDING IT?
- 4) WOULD ENACTMENT OF THIS BILL, WHICH INCLUDES NUMEROUS PROVISIONS THAT ARGUABLY OFFEND DUE PROCESS, MAKE IT MORE LIKELY THAT A TEXAS LAW UPON WHICH IT IS MODELED IS RULED UNCONSTITUTIONAL, OR PROMPT GREATER SCRUTINY OF THIS BILL AND CALIFORNIA’S UNDERLYING GUN LAWS?

SYNOPSIS

This bill is inspired by a controversial Texas law that prohibits a physician from knowingly performing or inducing an abortion on a pregnant woman if the physician detects electrical activity in an area of the embryo that will develop into the fetus’s heart (misleadingly described as the “fetal heartbeat” for the unborn child), or fails to perform a test to detect a “fetal heartbeat.” (Tex. Health & Safety Code Section 171.201 et seq. [enacted through Texas Senate Bill 8].) The Texas law provides that any person, other than an officer or employee of a state or local governmental entity in Texas acting in their official government capacity, may bring a civil action against any person who performs or induces an abortion; knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is

performed or induced, regardless of whether the person knew or should have known that the abortion would be performed or induced; or intends to engage in the conduct described above. The Texas law does not empower government authorities to enforce its prohibitions related to abortion by means of either criminal or civil enforcement. The U.S. Supreme Court declined to review the constitutionality of the law because of its lack of government enforcement.

This bill would similarly authorize any resident of, or visitor to, California, other than an officer or employee of a state or local governmental entity in this state, to bring a civil action against any person who knowingly traffics in illegal firearms and in firearm parts in the state. It would also make any person who sues the state (or any political subdivision, a governmental entity or public official in this state), or a person (i.e. a plaintiff who brings a cause of action under the bill), seeking to prevent the enforcement of any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, jointly and severally liable for the attorney's fees and costs of the prevailing party.

The analysis reviews why, despite the author's and sponsor's intent to turn the table on Texas and enact a law just like SB 8 that deals with firearms, the premise that this bill and its restrictions are parallel to SB 8 may be flawed and dangerous. The bill is not parallel to SB 8 for a number of reasons, including the facts that (1) it is difficult and potentially dangerous to allow civilians to attempt to enforce gun laws via vigilante-style lawsuits; (2) California, unlike Texas, already enforces its regulations of firearms via government action; (3) there is no binding U.S. Supreme Court precedent analogous to Roe v. Wade that prohibits the state from regulating and restricting the firearms and firearm parts at issue in this bill; and (4) the U.S. Supreme Court is likely to be far less deferential to California's efforts to regulate firearms than it was to Texas's efforts to regulate abortion.

The analysis also reviews the numerous troublesome aspects of the bill that are modeled on the Texas law and speculates that it may be unwise to incorporate these offensive provisions into our state's laws. But the analysis also points out that the bill does not conflict with, or be preempted by, the federal law protecting manufacturers from liability, PLCAA, and that it arguably could help assist enforcement of the state's gun laws. The author proposes a number of clarifying amendments. The author also proposes to omit one particularly problematic provision in the bill that would prohibit defendants from utilizing California's Anti-SLAPP Statute, which is not in Texas law, significantly improving the bill. The bill is sponsored by Governor Gavin Newsom and supported by firearm safety advocacy organizations, labor unions, local governments, and the Consumer Attorneys of California. Opponents are the ACLU and firearm rights advocacy organizations.

SUMMARY: Among other things, authorizes any resident of California or visitor to California, other than an officer or employee of a state or local governmental entity in this state, to bring a civil action against any person who knowingly traffics illegal firearms and legal firearm parts in the state. Specifically, **this bill:**

- 1) Duplicates, in newly enacted sections of the Business and Professions Code, provisions of the Penal Code that regulate the manufacturing, transportation, importation, and distribution of assault weapons, .50 BMG rifles, and unserialized firearms; and prohibit the sale, offering or exposing for sale, and giving or lending of any assault weapon, .50 BMG rifle, or unserialized firearm, except as provided.

- 2) Prohibits any person from manufacturing or causing to be manufactured, distributing, transporting, or importing into the state, or causing to be distributed or transported or imported into the state, keeping for sale, offering or exposing for sale, or giving or lending, any firearm precursor part; but clarifies that this prohibition shall not apply to a manufacturer or importer of firearms licensed pursuant to federal statutes and regulations.
- 3) Prohibits a licensed manufacturer or importer from manufacturing, causing to be manufactured, distributing, transporting, or importing into the state, or causing to be distributed, transported, or imported into the state, keeping for sale, offering or exposing for sale, or giving or lending any kit of firearm precursor parts containing all parts necessary to construct a functioning firearm.
- 4) Authorizes any person, other than an officer or employee of a state or local governmental entity, to bring a civil action against any person who knowingly does any of the following:
 - a) Violates any of the above;
 - b) Engages in conduct that aids or abets a violation, regardless of whether the person knew or should have known that the person aided or abetted would be in violation; or
 - c) Commits an act with the intent to engage in the conduct described above.
- 5) Clarifies that it is exclusively enforced through the above private civil action and that no enforcement may be taken or threatened by this state, a political subdivision, a district or county or city attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided. Nor shall any civil action predicated upon a violation be brought by this state, a political subdivision, a district or county or city attorney, or an executive or administrative officer or employee of this state or a political subdivision. Further prohibits this state, a state official, or a district, county, or city attorney from intervening in these actions.
- 6) Requires a court to award a prevailing claimant all of the following:
 - a) Injunctive relief sufficient to prevent the defendant from further violations or engaging in acts that aid or abet violations;
 - b) One of the following:
 - i) Statutory damages in an amount of not less than \$10,000 for each weapon or firearm precursor part in violation (unless found by a court to be invalid or unconstitutional, in which case ii), below, shall become operational).
 - ii) A civil penalty in an appropriate amount to be determined by the court for each violation of this chapter. In making that determination, the court shall consider factors that include, but are not limited to, the number of firearms or precursor parts involved in the defendant's violation of this chapter, the duration of the prohibited conduct, whether the defendant has previously violated this chapter or any other federal, state, or local law concerning the regulation of firearms, and any other factors tending to increase the risk to the public, such as proximity of the violations

to sensitive places (but only in the case that i), above, is held to be invalid or unconstitutional).

- c) Attorney's fees and costs.
- 7) Provides that no relief shall be awarded if the defendant demonstrates that the defendant previously paid the full amount of any monetary award in a previous action for each weapon or firearm precursor part.
 - 8) Requires such actions to be brought within four years of the cause of action accruing.
 - 9) Deems an act or omission in violation an injury in fact to all residents of, and visitors to, this state, and any such person shall have standing to bring a civil action.
 - 10) Provides that none of the following is a defense to the above action:
 - a) A defendant's ignorance or mistake of law;
 - b) A defendant's belief that these requirements are unconstitutional or were unconstitutional;
 - c) A defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in the violation;
 - d) A defendant's reliance on any state or federal court decision that is not binding on the court in which the action is brought;
 - e) Nonmutual issue preclusion or nonmutual claim preclusion;
 - f) Any claim that such enforcement or the imposition of civil liability against the defendant will violate a constitutional right of a third party;
 - g) A defendant's assertion that this law proscribes conduct that is separately prohibited by the Penal Code or any other law of this state, or that it proscribes conduct beyond that which is already prohibited by the Penal Code or any other law of this state; or
 - h) Any claim that the assault weapon, .50 BMG rifle, or firearm precursor part at issue was not misused, or was not intended to be misused, in a criminal or unlawful manner.
 - 11) Authorizes the following affirmative defenses to be proven by a defendant by a preponderance of the evidence:
 - a) A person sued for aiding or abetting reasonably believed, after conducting a reasonable investigation, that the person aided or abetted was in compliance; or
 - b) A person sued based on knowingly committing an act with intent to violate the law reasonably believed, after conducting a reasonable investigation, that the person was in compliance or was aiding or abetting another who was in compliance.

- 12) Provides that a defendant against whom an action is brought does not have standing to assert the right of another individual to keep and bear arms under the Second Amendment to the United States Constitution as a defense to liability unless either of the following is true:
 - a) The United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of other individuals in state court as a matter of federal constitutional law; or
 - b) The defendant has standing to assert the rights of other individuals under the tests for third-party standing established by the United States Supreme Court.
- 13) Authorizes a defendant to assert an affirmative defense to liability under the preceding section if both of the following are true:
 - a) The defendant has standing to assert the third-party right of an individual to keep and bear arms in accordance with the preceding section; and
 - b) The defendant demonstrates that the relief sought by the claimant will violate a third-party's rights under the Second Amendment to the United States Constitution right as defined by clearly established case law of the United States Supreme Court.
- 14) Clarifies that the preceding provisions do not limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability, and prohibits a court from awarding relief if the conduct for which the defendant has been sued was an exercise of a state or federal constitutional right that personally belongs to the defendant.
- 15) Clarifies that it does not authorize the initiation of a cause of action against a person purchasing, obtaining, or attempting to purchase or obtain an assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part from a person acting in violation of this law.
- 16) Establishes broad venue rules for these civil actions and restricts the ability to transfer venue.
- 17) Provides that it is inoperative and is thereafter repealed upon the total invalidation of a specific provision of Texas law by the United States Supreme Court or the Texas Supreme Court.
- 18) Provides that any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, a governmental entity or public official in this state, or a person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, or that represents any litigant seeking that relief, is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.
- 19) Provides, for purposes of 18), that a party is considered a "prevailing party" if a court does either of the following:
 - a) Dismisses any claim or cause of action brought by the party seeking the declaratory or injunctive relief described by subdivision (a), regardless of the reason for the dismissal.
 - b) Enters judgment in favor of the party opposing the declaratory or injunctive relief described by subdivision (a) on any claim or cause of action.

- 20) Declares the Legislature's intent that it would have enacted this chapter, and each provision, section, subdivision, sentence, clause, phrase, and word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subdivision, sentence, clause, phrase, or word, or application of this chapter, were to be declared unconstitutional or to represent an unconstitutional burden.
- 21) Includes a severability clause that, among other things, directs how courts may interpret it and what remedies they may order pursuant to its provisions:

A court shall not decline to enforce the severability requirements of this section on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision of this chapter does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. Each of the following is true about a judicial injunction or declaration of unconstitutionality of a provision of this chapter:

- (1) It is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the California Constitution or the United States Constitution.
- (2) It is not a formal amendment of the language in a statute.
- (3) It no more rewrites a statute than a decision by the executive not to enforce a duly-enacted statute in a limited and defined set of circumstances.

EXISTING LAW:

- 1) Provides, pursuant to the Second Amendment to the United States Constitution, that a well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed. (U.S. Const., Amend. 2.)
- 2) Requires, pursuant to federal law, licensed importers and licensed manufacturers to identify each firearm imported or manufactured by using the serial number engraved or cast on the receiver or frame of the weapon, in such manner as prescribed by the Attorney General of the United States. (18 U.S.C. Section 923, subd. (i).)
- 3) Pursuant to the federal United States Undetectable Firearms Act of 1988, makes it illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not as detectable by walk-through metal detection as a security exemplar containing 3.7 oz. of steel, or any firearm with major components that do not generate an accurate image before standard airport imaging technology. (18 U.S.C. Section 922, subd. (p).)
- 4) Prohibits, pursuant to the federal Protection of Lawful Commerce in Arms Act (PLCAA), a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. (15 U.S.C. Sections 7902, 7903.)

- 5) Provides that any person who manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided, is guilty of a felony. (Penal Code Section 30600.)
- 6) Establishes a detailed list of firearms falling within the definition of “assault weapon.” (Penal Code Sections 30510, 30515.) It also defines what is considered a “.50 BMG rifle.” (Penal Code Section 30530.)
- 7) Requires, commencing July 1, 2022, that the sale of a firearm precursor part by any party be conducted by or processed through a licensed firearm precursor part vendor. (Penal Code Section 30412.) Also prohibits certain persons from owning or possessing firearm precursor parts and provides other limitations on such parts. (Penal Code Section 30400 *et seq.*)
- 8) Defines “firearm” as a device designed to be used as a weapon from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. (Penal Code Section 16520.) It defines “firearm precursor part” to mean a component of a firearm that is necessary to build or assemble a firearm and is either an unfinished receiver or an unfinished handgun frame. (Penal Code Section 16531.)
- 9) Prohibits a person, firm, or corporation licensed to manufacture firearms pursuant to federal law from manufacturing firearms in California, unless the person, firm or corporation is also licensed under California law, as specified. (Penal Code Section 29010.)
- 10) Makes it illegal to change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol, revolver, or any other firearm, without first having secured written permission from the Department of Justice (DOJ) to make that change, alteration, or removal. (Penal Code Section 23900.)
- 11) Allows the DOJ, upon request, to assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer's number or other mark of identification, or whenever the manufacturer's number or other mark of identification, or a distinguishing number or mark assigned by the department has been destroyed or obliterated. (Penal Code Section 23910.)
- 12) Makes it a misdemeanor, with limited enumerated exceptions, for any person to buy, receive, dispose of, sell, offer to sell or have possession any pistol, revolver, or other firearm that has had the name of the maker or model, or the manufacturer's number or other mark of identification changed, altered, removed, or obliterated. (Penal Code Sections 23920, 23925.)
- 13) Requires a person be at least 18 years of age to purchase a rifle or shotgun. To purchase a handgun, a person must be at least 21 years of age. (Penal Code Section 26840.)
- 14) Requires firearms dealers to obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to the DOJ to perform a background check on the purchaser to determine whether they are prohibited from possessing a firearm. (Penal Code Sections 28160-28220.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This bill would authorize any resident of, or visitor to, California, other than an officer or employee of a state or local governmental entity in this state, to bring a civil action against any person who knowingly traffics in illegal firearms and in firearm parts in the state. It would also make any person who sues the state (or any political subdivision, a governmental entity or public official in this state), or a person (i.e. a plaintiff who brings a cause of action under the bill), seeking to prevent the enforcement of any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, jointly and severally liable for the attorney's fees and costs of the prevailing party. It also provides a definition of "prevailing party" that strongly favors the party opposing such an action.

These provisions, according to the bill's authors and supporters, would supplement the public law enforcement entities that now enforce the state's existing firearm laws restricting the sale, distribution, importation, and possession of the generally illegal firearms (and to some extent the firearm precursor parts) at issue in the bill. According to the author:

Violent, gun-related crime is skyrocketing across the state. Continuing California's record as a pioneer in commonsense gun reform, SB 1327 offers a new tool to combat the rise in gun violence and save lives – a private enforcement scheme. Modeled on the structure of Texas' recent abortion ban, SB 1327 allows private citizens to sue anyone who manufactures, distributes, transports, imports, or sells assault weapons, .50 BMG rifles, ghost guns, or ghost gun kits in California.

The author explains the logic of using Texas law as a model for this bill:

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

In fact, the connection between the Texas law and the bill, is explicit in the bill itself. One provision provides that if and when the Texas law were invalidated, the bill would become inoperative:

This chapter shall become inoperative upon invalidation of Subchapter H (commencing with Section 171.201) of Chapter 171 of the Texas Health and Safety Code in its entirety by a final decision of the United States Supreme Court or Texas Supreme Court, and is repealed on January 1 of the following year.

Thus, the flawed logic and clever private enforcement mechanism of the Texas law, developed to avoid judicial scrutiny and not involve government enforcement of an unconstitutional law, is replicated in this bill.

Texas's Senate Bill 8 empowered private citizens to sue persons engaging in otherwise lawful activity related to abortion. As indicated by the author above, the enforcement scheme envisioned by this bill is based on a controversial Texas law that prohibits a physician from knowingly performing or inducing an abortion on a pregnant woman if the physician detects electrical activity in an area of the embryo that will develop into the fetus's heart (misleadingly described as the "fetal heartbeat" for the unborn child), or fails to perform a test to detect a "fetal

heartbeat.” (Tex. Health & Safety Code Section 171.201 *et seq.* [enacted through Texas Senate Bill 8].) The Texas law provides that any person, other than an officer or employee of a state or local governmental entity in Texas acting in their official government capacity, may bring a civil action against any person who:

- Performs or induces an abortion;
- Knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced, regardless of whether the person knew or should have known that the abortion would be performed or induced; or
- Intends to engage in the conduct described above.

The Texas law does not empower government authorities to enforce its prohibitions related to abortion by means of either criminal or civil enforcement.

When SB 8 was signed into law, U.S. Supreme Court precedent (*Roe v. Wade* (1973) 410 U.S. 113, 147 – 164 and *Planned Parenthood v. Casey* (1992) 505 U.S. 833) clearly recognized that the state’s interest in prohibiting abortion before fetal viability is insufficient to support a ban on abortion at such an early stage of embryonic development; and thus such a prohibition would constitute an undue interference with a woman’s right to an abortion. Therefore, at least if it had used government authority to prohibit abortion as soon as a “fetal heartbeat” could be detected, SB 8 clearly would have been unconstitutional under the then (and still, as of the date of this analysis) valid precedents of *Roe* and *Casey*. SB 8 clearly was designed to evade such precedents. It did so, in part at least, by empowering private citizens to enforce its provisions.

Texas abortion providers, led by Whole Women’s Health and other independent abortion clinics, doctors, clinic staff, abortion funds, support networks, and clergy members, challenged SB 8 and requested an order enjoining all state-court clerks from docketing such cases, and all state court judges in Texas from hearing such cases. They also named a private individual and executive licensing officials as defendants. The district court denied the defendants’ motions to dismiss. However, the Fifth Circuit denied the plaintiffs’ request for an injunction barring enforcement of the law pending appeal. The providers sought injunctive relief from the Supreme Court. On certiorari, the Supreme Court held that a pre-enforcement challenge to the law under the U.S. Constitution may only proceed against certain defendants, but not against judges and court clerks, and that “an actual controversy” between individual parties was not before the court. (*Whole Woman's Health v. Jackson* (2021) 142 S.Ct. 522, 530.) The Court’s ruling allowed the law to remain in effect and insulated the private enforcement aspect of the law from challenge. In theory, the law could be challenged by a person who was sued in the future pursuant to SB 8. But in the meantime, the Texas law was allowed to remain in effect. Even if a civil action is never filed pursuant to SB 8, the law has a chilling effect on the activities of doctors and clinics and, most importantly, on the ability of pregnant persons to exercise their constitutional rights protected by *Roe* and *Casey*.

This bill. The bill has two main provisions: (1) a new private right of action for any private person to sue another person or entity for violating several of the state’s existing, as well as some new, laws related to firearms; and (2) a provision that makes any person who seeks in any court to prevent enforcement of the bill or any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, jointly and severally liable for paying the attorney’s fees and costs of the prevailing party in that action.

- 1) *Private right of action based upon the manufacture, distribution, transportation, importation, and sale of assault weapons, .50 BMG rifles, and unserialized firearms or aiding or abetting such acts.*

The bill creates a new private right of action for any private person (i.e. any individual who is not acting pursuant to government authority) to sue another person or entity for violating several of the state's existing, as well as some new, laws related to firearms. Similar to the Texas law, the bill specifically prohibits any public enforcement of this provision and relies solely on the private right of action. It reiterates in multiple provisions that public officials have no right to initiate or even intervene to pursue such cases, at least when acting in their official government role.

The clear premise of the bill is that if Texas can use a clever scheme of private enforcement of quasi-criminal laws to avoid federal supremacy and infringe on constitutional rights which its Legislature and Governor do not favor, then California should use a similar scheme to carry out its own restrictions that could infringe on constitutional rights in order to achieve its policy priorities and goals. The author acknowledges the distinction between this bill and SB 8:

By enacting its abortion ban, Texas is knowingly infringing upon a well-established constitutional right. However, while the Supreme Court recognizes an individual constitutional right to bear arms, it certainly does not recognize a constitutional right to own, manufacture, or sell an illegal assault weapon or ghost gun.

Supporters point out that the bill could aid in the enforcement of the state's gun laws. On the other hand, questions could be raised about whether enacting an anti-gun bill modeled on an anti-abortion bill would be dangerous. In any case, the premise of this bill—that its restrictions on firearms are parallel to SB 8's restrictions on abortion--may be somewhat flawed for the following reasons:

- SB 8 makes it easy to sue abortion providers and patients, which is why licensed clinics and healthcare providers have stopped operating in the State of Texas and the vast majority of patients must go out of state to obtain abortions.

It is difficult and potentially dangerous to allow civilians to attempt to enforce gun laws via vigilante-style lawsuits. After all, potential defendants are, by definition, armed with weapons. Therefore, plaintiffs may need to be armed, as well.

California's gun laws are notoriously complex. In criminal prosecutions, expert testimony is routinely necessary to identify firearms as assault weapons and .50 BMG rifles. Plaintiffs may be mistaken about whether a firearm is, in fact, an assault weapon or a .50 BMG rifle, or whether a piece of metal is, in fact, a precursor part of a firearm. What remedies would the defendant have for erroneously being sued under the bill? Do we really want armed civilians to enforce our state's gun laws?

- When SB 8 was enacted, binding U.S. Supreme Court precedent (*Roe* and *Casey*) clearly would have made its restrictions unconstitutional if they had been enforced by government actors.

There is no analogous binding U.S. Supreme Court precedent that prohibits the state from regulating and restricting the firearms and firearm parts at issue in this bill. California's assault weapons laws, for example, have been challenged, but never

invalidated. (Although a recent case brought in a federal district court in California, Miller v. Bonta (S.D. Cal. 2021) 542 F. Supp. 3d 1009, held that enforcement of a number of Penal Code statutes as applied to assault weapons unconstitutionally infringed on the Second Amendment. A Ninth Circuit appeals court has stayed that order.)

A proposal more analogous to SB 8 would be one that allowed private causes of action against individuals who possessed firearms in their homes or carried them for self-protection in California. If enforced by government authority, such proposals would clearly violate the constitution, according to binding U.S. Supreme Court precedent. (District of Columbia v. Heller (2008) 554 U.S. 570.)

- The State of Texas did not make its restrictions on abortion into crimes that are enforced by state and local law enforcement, or allow anti-abortion regulations to be enforced by state and local public agencies. Such provisions clearly would have been unconstitutional at the time SB 8 was enacted.

California has such laws and restrictions, allowing government enforcement of gun laws, in place now. State law tightly controls, regulates, and criminalizes activities related to restricted firearms, including assault weapons and .50 caliber BMG rifles; and regulates the manufacture, sale, and distribution of firearms (and even some firearm parts) in an extensive and complex manner. Therefore, a clever scheme to avoid government enforcement and evade pre-enforcement court review of those laws is unnecessary.

- If and when the Supreme Court overturns *Roe* and *Casey*, there will be no constitutionally protected right to abortion. Texas could then, in theory at least, adopt a statute similar to SB 8 that would be enforced by government actors. SB 8 and its frontal assault on constitutional precedent will be far less controversial from a constitutional perspective if and when that happens.

If and when Roe and Casey are overturned, on the other hand, there will still be a right to bear arms under the Second Amendment. The U.S. Supreme Court could review and potentially invalidate the bill's enforcement mechanisms (given its obviously problematic provisions borrowed from Texas law), perhaps because of the flaws imported from Texas. They could also review and invalidate some of California's firearms laws that are replicated in the bill, as well.

Presumably in order to avoid a direct challenge to *Heller*, this bill does not prohibit anyone from possessing or using any weapon. Rather, the bill authorizes a civil action based on the manufacture, distribution, transportation, importation, and sale of assault weapons, .50 BMG rifles, and unserialized firearms.

Liability would also attach under the bill if a person knowingly engaged in conduct that aids or abets a violation, *regardless of whether the person knew or should have known that the person aided or abetted would be violating this law*. While the bill uses the term “aiding and abetting,” it does not define the term. However, the crime of aiding and abetting another person in their commission of a crime requires that, “The defendant knew that the perpetrator intended to commit the crime.” (See Judicial Council of California, Criminal Jury Instructions, CALCRIM No. 401. Aiding and Abetting: Intended Crimes (2022 ed.)) While the bill proposes to create a civil, rather than a criminal, offense, it also imports concepts from the criminal law. It is difficult to know, therefore, how a person could avoid aiding or abetting another party’s violation of the

bill if they did not realize that the person was doing, or planned to do, anything illegal. Could liability extend to loaning money to a friend, if the money was used to purchase an assault weapon? It is difficult to say.

The bill at least provides potential affirmative defenses to an allegation of aiding and abetting, as long as *the defendant* proves by a preponderance of the evidence that such a defense applies:

Both of the following are affirmative defenses to an action brought under this section:

(A) A person . . . reasonably believed, after conducting a reasonable investigation, that the person aided or abetted was complying with this chapter.

(B) A person . . . reasonably believed, after conducting a reasonable investigation, that the person was complying with this chapter or was aiding or abetting another who was complying with this chapter.

(2) The defendant has the burden of proving an affirmative defense under this subdivision by a preponderance of the evidence.

Penalties: If a claim under the bill were successful (i.e. the defendant were found liable for engaging in the manufacturing, transportation, importation, and distribution of assault weapons, .50 BMG rifles, and unserialized firearms), a court would be required to award a prevailing claimant all of the following: (1) injunctive relief sufficient to prevent the defendant from further violations or engaging in acts that aid or abet violations; (2) statutory damages in an amount of not less than \$10,000 *for each weapon or firearm precursor part*; and (3) attorney’s fees and costs. Because the bill invalidates nonmutual issue preclusion and nonmutual claim preclusion as defenses to actions, a defendant could be sued repeatedly all over the state for the same conduct, despite having already succeeded in defending against the same claims. The only way to stop the cycle would be when “the defendant demonstrates that the defendant previously paid the full amount of any monetary award.”

2) *Joint and several liability to government entities for costs of challenging the state’s gun laws if the government is a prevailing party in those lawsuits.*

Texas included a number of provisions in SB 8 to discourage lawsuits challenging the law itself, as well as other state laws regarding abortion. The mechanism for doing so was to make the party who was not the “prevailing party” in such a lawsuit responsible for attorney’s fees, imposed liability for the fees on both the plaintiff and their attorney, and create lopsided and unfair rules about who was the “prevailing party” (spoiler alert: almost never the party who challenges the law).

This bill replicates those provisions. The bill makes plaintiffs **and their attorneys** liable for attorney fees for challenging the bill or any other “statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms” if the government prevails in that challenge.

Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, a governmental entity or public official in this state, or a person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, in any state or federal court, or that

represents any litigant seeking that relief in any state or federal court, is *jointly and severally liable to pay the attorney's fees and costs of the prevailing party.*

Again mirroring the Texas law, the bill makes the party challenging the bill or another state law regulating firearms, including an entity, attorney, or law firm representing them, liable for the attorney's fees of the "prevailing party" in such a lawsuit and makes it virtually impossible for the government defending the law *not* to be considered a "prevailing party." For purposes of this provision, the defendant is considered a prevailing party if a court does either of the following:

- 1) Dismisses any claim or cause of action brought by the party seeking the declaratory or injunctive relief described by subdivision (a), regardless of the reason for the dismissal.
- 2) Enters judgment in favor of the party opposing the declaratory or injunctive relief described by subdivision (a) on any claim or cause of action.

It's a lose-lose scenario for plaintiffs who challenge the bill or a gun law; and a win-win scenario for the government. An attorney could properly represent a client in seeking to strike down an unconstitutional law, win on all but one count, and break no other statutory or professional duties, but then be held responsible (along with their client) for paying the defendant's attorney's fees. In fact, even if the defendant failed to seek attorney's fees in the underlying action or the court refused to award them and *found this bill to unconstitutional*, this bill would allow the defendant government entity to bring an action within three years to hold the attorney responsible for those fees and costs.

This language appears to be unprecedented in California law and likely would not be endorsed by this Committee but for the fact that it is included in this bill and modeled on Texas law.

Venue rules. The bill also duplicates the very unusual and unfair (to defendants) venue rules in SB 8 that leave a great deal of discretion in the hands of a suing plaintiff about where to file a lawsuit. Under the bill, a claim can be filed in any of the following venues:

- (1) The county in which all or a substantial part of the events or omissions giving rise to the claim occurred.
- (2) The county of residence for any one of the natural person defendants at the time the cause of action accrued.
- (3) The county of the principal office in this state of any one of the defendants that is not a natural person.
- (4) The county of residence for the claimant if the claimant is a natural person residing in this state.

Therefore, defendants could be forced to travel to any county in which a plaintiff lives, even if the defendant has no connection to that county; and "the action shall not be transferred to a different venue without the written consent of all parties." Presumably, this would prohibit joinder of cases filed in different counties, for example, even when the claims were based upon the same evidence and facts, necessitating multiple trials and potentially duplicative litigation, which is not a wise use of the state's judicial resources.

The bill does not appear to conflict with, or be preempted by, the federal PLCAA. The right to file a civil action against a gun manufacturer or dealer is hamstrung by a federal immunity statute titled the Protection of Lawful Commerce in Arms Act, or PLCAA. (15 U.S.C. Sec 7902.) Signed by President George W. Bush in 2005, PLCAA prohibits a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. (15 U.S.C. Sections 7902, 7903.)

The California Rifle & Pistol Association, referring to PLCAA, writes that “SB 1327 clearly is in direct conflict with federal law that has been tried and tested!” But PLCAA does not appear relevant or applicable because the bill does not authorize civil suits against manufacturers or dealers based upon the illegal acts of a gun users or a third parties. Rather, it authorizes civil suits against a manufacturer or dealer *themselves*, but only *if they violate existing state laws* requiring them to be licensed and otherwise comply with laws that regulate the firearms at issue in the bill. Gun Owners of California acknowledge this fact, again referring to PLCAA: “The act does not protect anyone who commits a crime, only those involved in the legal commerce of a legal product.” PLCAA could possibly be relevant, and offer a defense to the bill, if a plaintiff attempted to sue a manufacturer or dealer for aiding and abetting a third party’s violation of the bill. But that does not mean the bill violates, conflicts with, or is preempted by PLCAA.

The bill’s directives to courts appear to violate the state’s separation of powers doctrine. The bill includes a severability clause that attempts to direct how courts may interpret its provisions and what remedies they may order should they invalidate that part of the bill.

The bill attempts to tell the courts whether to sever part of a statute, or rule that the severance is not possible:

- A court shall not decline to enforce the severability requirements of this section on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity.

It seeks to tell a court what legal effect an order declining to enforce the bill would have:

- A court that declines to enforce or enjoins a state official from enforcing a statutory provision of this chapter does not rewrite a statute, as the statute continues to contain the same words as before the court’s decision.

It even attempts to preemptively interpret the meaning of a judicial injunction or declaration of unconstitutionality:

- Each of the following is true about a judicial injunction or declaration of unconstitutionality of a provision of this chapter:
 - (1) It is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the California Constitution or the United States Constitution.
 - (2) It is not a formal amendment of the language in a statute.
 - (3) It no more rewrites a statute than a decision by the executive not to enforce a duly-enacted statute in a limited and defined set of circumstances.

The California Constitution recognizes the separation of the three branches of our state government. “The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.” (Cal Const, art. III, Section 3.) While the Legislature may express its intent about how it would prefer a court to interpret statutory language, ultimately it is the role of the courts, rather than the Legislature, to interpret the meaning of a statute and resolve controversies before it. “Among the judiciary branch’s “core” or “essential” functions is the power to resolve specific controversies between parties and declare the law.” (*Case v. Lazben Financial Co.* (2002) 99 Cal.App.4th 172, 184.) A court must consider the plain meaning of the language of a statute into account and, if the language is unclear, consider extrinsic evidence and “must, if possible without doing violence to the language and spirit of the law, interpret it so as to harmonize and give effect to all its provisions.” (*People v. Garcia* (1999) 21 Cal.4th 1, 14.)

The severability provisions in the bill go far beyond expressions of legislative intent and appear to infringe on the judicial branch’s core or essential functions to “resolve specific controversies between parties and declare the law” and therefore violate the California Constitution. But of course, the judicial branch has the authority to interpret the language and, notwithstanding the language of the bill, to invalidate it.

Aren’t we better than Texas? In her concurring opinion in *Whole Woman’s Health*, Justice Sotomayor outlines the Texas law’s “numerous procedural and substantive anomalies,” which she denounces as the “manipulation of state-court procedures and defenses.” (*Whole Woman’s Health v. Jackson*, supra, 142 S.Ct. at 546.) These are the same provisions that this bill carries over. In part, she writes:

S. B. 8 also modifies state-court procedures to make litigation uniquely punitive for those sued. It allows defendants to be hauled into court in any county in which a plaintiff lives, even if that county has no relationship to the defendants or the abortion procedure at issue. §171.210(a)(4). It gives the plaintiff a veto over any venue transfer, regardless of the inconvenience to the defendants. §171.210(b). It prohibits defendants from invoking nonmutual issue or claim preclusion, meaning that if they prevail, they remain vulnerable to suit by any other plaintiff anywhere in the State for the same conduct. §171.208(e)(5). It also bars defendants from relying on any nonbinding court decision, such as persuasive precedent from other trial courts. §171.208(e)(4). Although it guarantees attorney’s fees and costs to prevailing plaintiffs, §171.208(b)(3), it categorically denies them to prevailing defendants, §171.208(i), so they must finance their own defenses no matter how frivolous the suits. These provisions are considerable departures from the norm in Texas courts and in most courts across the Nation.

Justice Sotomayor ultimately concludes:

As a whole, these provisions go beyond imposing liability on the exercise of a constitutional right. If enforced, they prevent providers from seeking effective pre-enforcement relief (in both state and federal court) while simultaneously depriving them of effective post-enforcement adjudication, potentially violating procedural due process.

While the goal of turning the tables on Texas to give it a taste of its own medicine may be appealing, the numerous problematic provisions within the bill may not justify those ends. Those

provisions act to insulate government action from meaningful challenge and also create a strong, punitive deterrent for any that try to challenge the law themselves and in the end, as a whole may violate due process guarantees. These provisions arguably undermine our justice system by incorporating them into California law and undermine the state's principles in the process.

The Committee and Legislature may wish to consider whether it is wise to incorporate Texas's problematic scheme for evading judicial review through vigilante-style enforcement, as well as its numerous elements that conflict with the state's priorities and principles, into California law to help enforce the state's regulations of firearms, potentially violating the rights of Californians in the process. The Committee and Legislature may also wish to consider the risk that utilizing this model may only legitimize it further and potentially invite US Supreme Court scrutiny of the state's existing regulatory system related to firearms; and could this bill have profoundly negative in state and across the nation.

Author's Amendments. The author proposes a number of amendments to the bill, most of which are minor and clarifying. Clarifying amendments do the following:

- Change the term “statutory damages” to “civil penalty” because “statutory damages” is the wrong term to use where no “damages” are specified in the statute.

On Page 13, at line 19, strike out “Statutory damages” and insert: “A civil penalty”

- Strike out language that could be interpreted to require federal courts to award attorney fees to a prevailing party (which is beyond the state's power).

On Page 19, at lines 6-7 and at line 8, strike out: “in any state or federal court”

On Page 19, at line 11, strike out: “state or federal”

- Clarify which party is the “party” in the prevailing party provision so it is clear they are the party defending against and injunction, etc. The current language does not make clear which party it is.

On Page 19, at lines 16 – 17:

(2) Enters judgment in the party's favor ***of the party opposing the declaratory or injunctive relief described by subdivision (a)*** on any claim or cause of action.

The author also proposes one significant amendment to remove the bill's prohibition on the ability of parties to utilize California's Anti-SLAPP Statute in litigation. The impact of that provision is discussed by the Senate Judiciary Committee in that committee's analysis of the bill:

One device that could protect against plaintiffs abusing this is California's anti-SLAPP statute. That law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike. (Civ. Proc. Code § 425.16.) The Legislature asserted that the law was justified because “it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process.” This bill prohibits such anti-SLAPP motions.

ARGUMENTS IN SUPPORT: Governor Newsom, the sponsor of the bill, described the inspiration for the bill in a press statement on December 11, 2021, after the U.S. Supreme Court declined to review the constitutionality of SB 8:

[I]f states can now shield their laws from review by the federal courts that compare assault weapons to Swiss Army knives, then California will use that authority to protect people's lives, where Texas used it to put women in harm's way. I have directed my staff to work with the Legislature and the Attorney General on a bill that would create a right of action allowing private citizens to seek injunctive relief, and statutory damages of at least \$10,000 per violation plus costs and attorney's fees, against anyone who manufactures, distributes, or sells an assault weapon or ghost gun kit or parts in the State of California. If the most efficient way to keep these devastating weapons off our streets is to add the threat of private lawsuits, we should do just that.

Everytown for Gun Safety, Moms Demand Action, and Students Demand Action write in a joint letter:

SB 1327 strengthens California gun laws by empowering individuals to bring civil actions against those who manufacture, distribute, transport, import into California, or sell dangerous and illegal assault weapons and ghost guns. This measure continues California's record as a pioneer in commonsense gun reform and offers a new tool to combat the rise in gun violence and keep communities safe.

The Los Angeles County District Attorney's Office writes:

SB 1327 does not interfere with a prosecutor's ability to enforce existing criminal statutes involving illegal firearms. Rather, it ensures the continued enforcement of California's gun laws by utilizing the same legal mechanism authorized by Texas' anti-abortion law.

ARGUMENTS IN OPPOSITION: ACLU California Action writes:

We admire and share the Governor's commitment to reproductive freedom, and we do not take issue with his legitimate concerns about the deadly proliferation of illegal guns. But there is no way to 'take advantage of the flawed logic' of the Texas law. No worthy motive and no permissible goal can justify such a radical and dangerous assault on our constitutional structure. Replicating the reprehensible Texas model only serves to legitimize and promote it, as evidenced by the copycat measures already enacted in some states, with many more pending around the country

This legal framework is unsound and invalid no matter what activity it is directed at because it eviscerates basic principles of constitutional government by destroying an individual's ability to petition a court to block the state from violating a legal right. . . . Because we oppose restricting Californians' access to justice through the court system, we cannot stand silently by while California leaders escalate an "arms race" of new weapons to curtail the adjudication of rights by setting up bounty-hunting schemes on politically sensitive issues, particularly at a time when so many of our rights across this nation are under attack: the right to access abortion, contraception, and gender-affirming care, and the right to vote, to name just a few examples [footnotes omitted].

SB 1327

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California Rifle & Pistol Association opposes the bill for a number of reasons, including the following:

This is another misguided bill that seeks to quash and discriminate against the rights of those engaged in lawful commerce to restrict law abiding citizen's access to firearms instead of holding accountable those that misuse firearms. . . If passed it will result is distracted law enforcement and wasted tax dollars. It will be challenged, and it will be repealed.

REGISTERED SUPPORT / OPPOSITION:

Support

Governor Gavin Newsom (sponsor)
California Federation of Teachers AFL-CIO
California School Employees Association
City of Mountain View
Consumer Attorneys of California
County of San Diego
Everytown for Gun Safety Action Fund
Los Angeles County District Attorney's Office
Moms Demand Action for Gun Sense in America
National Association of Social Workers, California Chapter
Students Demand Action for Gun Sense in America

Opposition

ACLU California Action
California Rifle and Pistol Association
Gun Owners of California
National Rifle Association - Institute for Legislative Action

Analysis Prepared by: Alison Merrilees / JUD. / (916) 319-2334

EXHIBIT B

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

SB 1327

UNFINISHED BUSINESS

Bill No: SB 1327
Author: Hertzberg (D) and Portantino (D), et al.
Amended: 6/23/22
Vote: 21

SENATE JUDICIARY COMMITTEE: 8-1, 4/5/22
AYES: Umberg, Caballero, Durazo, Hertzberg, Laird, Stern, Wieckowski, Wiener
NOES: Jones
NO VOTE RECORDED: Borgeas, Gonzalez

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 4/26/22
AYES: Bradford, Kamlager, Skinner, Wiener
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/19/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 24-10, 5/24/22
AYES: Allen, Atkins, Becker, Bradford, Durazo, Eggman, Glazer, Gonzalez,
Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan,
Portantino, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NOES: Bates, Borgeas, Dahle, Grove, Hurtado, Jones, Melendez, Nielsen, Ochoa
Bogh, Wilk
NO VOTE RECORDED: Archuleta, Caballero, Cortese, Dodd, Hertzberg, Roth

ASSEMBLY FLOOR: 52-21, 6/27/22 - See last page for vote

SUBJECT: Firearms: private rights of action

SOURCE: Governor Gavin Newsom

DIGEST: This bill establishes privately-enforced civil causes of action against persons who manufacture or cause to be manufactured, distribute, transport, or

import into the state, or cause to be distributed or transported or imported into the state, keep for sale or offer or expose for sale, or give or lend certain firearms.

Assembly Amendments remove the restriction on Anti-SLAPP motions, rework definitions of precursor parts and the prohibitions applying thereto, and subject sales of firearms to any person under 21 years of age to the civil liability imposed by the bill.

ANALYSIS:

Existing federal law:

- 1) Provides that a well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed. (U.S. Const. Amend. 2.)
- 2) Prohibits a qualified civil liability action, as defined, from being brought in any Federal or State court. (15 U.S.C. § 7902.)

Existing state law:

- 1) Provides that any person who manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided, is guilty of a felony. (Pen. Code § 30600.)
- 2) Establishes a detailed list of firearms falling within the definition of “assault weapon.” (Pen. Code §§ 30510, 30515.) It also defines what is considered a “.50 BMG rifle.” (Pen. Code § 30530.)
- 3) Requires the sale of a firearm precursor part be conducted by or processed through a licensed firearm precursor part vendor. (Pen. Code § 30412.) It also prohibits certain persons from owning or possessing firearm precursor parts and provides other limitations on such parts. (Pen. Code § 30400 et seq.)
- 4) Defines “firearm” as a device designed to be used as a weapon from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. (Pen. Code § 16520.) It defines “firearm precursor part” to mean a component of a firearm that is necessary to build or assemble a firearm and is either an unfinished receiver or an unfinished handgun frame. (Pen. Code § 16531.)

- 5) Prohibits a person, firm, or corporation licensed to manufacture firearms pursuant to federal law from manufacturing firearms in California, unless the person, firm or corporation is also licensed under California law, as specified. (Pen. Code § 29010.)
- 6) Makes it illegal to change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol, revolver, or any other firearm, without first having secured written permission from the Department of Justice (DOJ) to make that change, alteration, or removal. (Pen. Code § 23900.)

This bill:

- 1) Provides that no person shall manufacture or cause to be manufactured, distribute, transport, or import into the state, or cause to be distributed, transported, or imported into the state, keep for sale, offer or expose for sale, or give or lend, any assault weapon, .50 BMG rifle, or unserialized firearm, except as provided.
- 2) Makes it unlawful for a person to purchase, sell, offer to sell, or transfer ownership of any firearm precursor part in this state that is not a federally regulated firearm precursor part, as defined.
- 3) Restricts the sale, supply delivery, or provisions of possession or control of a firearm to anyone under 21 years of age, except as provided.
- 4) Authorizes any person, other than an officer or employee of a state or local governmental entity, to bring a civil action against any person who knowingly:
 - a) violates the above;
 - b) engages in conduct that aids or abets a violation, regardless of whether the person knew or should have known that the person aided or abetted would be in violation; or
 - c) commits an act with the intent to engage in the conduct above.
- 5) Provides it is exclusively enforced through the above private civil action.
- 6) Requires a court to award a prevailing claimant injunctive relief; statutory damages in an amount of not less than \$10,000 for each weapon or firearm precursor part in violation; and attorney's fees and costs.

- 7) Provides that the statutory damages provision is repealed if found by a court to be invalid or unconstitutional, and replaced with an award of statutory damages in an amount determined by the court based on specified factors.
- 8) Deems an act or omission in violation an injury in fact to all residents of, and visitors to, this state, and grants them standing to bring a civil action.
- 9) Provides specified assertions or circumstances that shall not be considered a defense to the above action and authorizes specified affirmative defenses that can be proven by a defendant by a preponderance of the evidence.
- 10) Clarifies that it does not authorize the initiation of a cause of action against a person purchasing, obtaining, or attempting to purchase or obtain an assault weapon, .50 BMG rifle, unserialized firearm, or firearm precursor part from a person acting in violation of this law.
- 11) Establishes broad venue rules for these civil actions and restricts the ability to transfer venue. Includes a severability clause.
- 12) Provides that it is inoperative and is thereafter repealed upon the total invalidation of a specific provision of Texas law by the United States Supreme Court or the Texas Supreme Court.
- 13) Provides that any person, who seeks declaratory or injunctive relief to prevent government entities or persons in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms or that represents any litigant seeking that relief is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.

Background

There has been a dramatic rise in the use of assault weapons in gun massacres with six or more deaths, owing to their ability to inflict greater damage at a quicker rate.¹ Research shows that laws restricting assault weapons reduce deaths; estimates find mass-shooting fatalities were 70 percent less likely during the period when the federal ban was in effect.² Another rising scourge is the prevalence of

¹ Emily Shapiro, *The type of gun used in most US homicides is not an AR-15* (October 26, 2021) abcNews, <https://abcnews.go.com/US/type-gun-us-homicides-ar-15/story?id=78689504>. All internet citations are current as of May 20, 2022.

² Charles DiMaggio, et al., *Changes in US mass shooting deaths associated with the 1994-2004 federal assault weapons ban: Analysis of open-source data* (January 2019) *The Journal of Trauma and Acute Care Surgery*, <https://doi.org/10.1097/TA.0000000000002060>.

“ghost guns.” In 2020, California accounted for 65 percent of all ghost guns seized by the Bureau of Alcohol, Tobacco, Firearms and Explosives.³ The weapons have been linked to 24 killings and dozens of other crimes in 2020 in Los Angeles alone. The problem of gun violence in our society is not going away. In 2020, over 45,000 Americans died from gun-related injuries in the United States. This is the most on record by far, a 43 percent increase from a decade prior.

This bill seeks to curb the prevalence of these weapons by enlisting the help of Californians. The bill reproduces relevant Penal Code provisions relating to assault weapons, rifles, “ghost guns,” and other illegal firearms into the Business and Professions Code, with limited extensions of existing restrictions. Any Californian is authorized to bring a civil action against anyone that manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any assault weapon, .50 BMG rifle, or firearm lacking a required serial number, as specified. The bill is modeled after a controversial Texas abortion law, and includes a number of the same problematic procedural mechanisms. For a more thorough analysis of this bill, please see the Senate Judiciary Committee analysis.

Comments

According to the author:

Violent, gun-related crime is skyrocketing across the state. Continuing California’s record as a pioneer in commonsense gun reform, SB 1327 offers a new tool to combat the rise in gun violence and save lives – a private enforcement scheme. Modeled on the structure of Texas’ recent abortion ban, SB 1327 allows private citizens to sue anyone who manufactures, distributes, transports, imports, or sells assault weapons, .50 BMG rifles, ghost guns, or ghost gun kits in California. By enacting its abortion ban, Texas is knowingly infringing upon a well-established constitutional right. However, while the Supreme Court recognizes an individual constitutional right to bear arms, it certainly does not recognize a constitutional right to own, manufacture, or sell an illegal assault weapon or ghost gun.

A private right of action allows individuals or private entities the ability to take action and enforce the law and their rights without having to rely on a government

³ Justin Ray, ‘An instrument of death’: The problem of ghost guns in California (November 15, 2021) Los Angeles Times, <https://www.latimes.com/california/newsletter/2021-11-15/ghost-guns-california-essential-california>.

entity to take action. Even where there is an established regulatory system, there are limits on the resources that public agencies and prosecutors can commit to upholding the law. The creation of an alternative enforcement mechanism that can be used by private parties is therefore often essential to more robust enforcement of California's laws. This bill establishes these enforcement mechanisms for California's gun control laws by duplicating many existing prohibitions into the Business and Professions Code. However, concerns have arisen that there is a risk that utilizing the Texas model only legitimizes it further, which could have negative ramifications across the nation. Beyond just simply allowing for private rights of action, the bill also includes a series of procedural mechanisms that are particularly problematic, and arguably raise serious due process concerns. In her opinion in *Whole Woman's Health*, Justice Sotomayor outlines the Texas law's "numerous procedural and substantive anomalies," which she denounces as the "manipulation of state-court procedures and defenses."⁴ She ultimately concludes:

As a whole, these provisions go beyond imposing liability on the exercise of a constitutional right. If enforced, they prevent providers from seeking effective pre-enforcement relief (in both state and federal court) while simultaneously depriving them of effective post-enforcement adjudication, potentially violating procedural due process.

While the goal of repurposing the Texas law may be sound, these problematic provisions may not justify those ends. They insulate government action from meaningful challenge by creating a strong, punitive deterrent for any that try and in the end, may violate due process guarantees.

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

According to the Assembly Appropriations Committee:

- Costs (General Fund (GF)) of \$479,000 in fiscal year (FY) 2022-23, \$771,000 in FYs 2023-24 and 2024-25, \$591,000 in FY 2025-26, and \$383,000 annually thereafter to the Department of Justice (DOJ) in additional staff and resources to handle litigation directed at the legislation and provide written guidance on prohibited precursor parts.
- Cost pressure (Trial Court Trust Fund (TCTF)) in the mid-to-upper-hundreds of thousands of dollars to the trial courts in increased workload to hear and adjudicate civil actions against a person who sells an illegal firearm. As with

⁴ *Whole Woman's Health v. Jackson* (2021) 142 S. Ct. 522, 546.

any civil action for damages, a plaintiff is entitled to a jury trial. It is unclear how many new actions will be filed statewide, but if 10 cases are filed in state civil court annually requiring seven to ten days, or 56 to 80 hours, of court time, at an average cost per hour of \$1,000 in workload, the cost to the trial courts would be between \$560,000 and \$800,000 annually. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the to perform existing duties.

SUPPORT: (Verified 6/28/22)

Governor Gavin Newsom (source)
California School Employees Association, AFL-CIO
City of Mountain View
Consumer Attorneys of California
County of San Diego
Everytown for Gun Safety Action Fund
California Federation of Teachers
KIPP SoCal Public Schools
L.A. Care Health Plan
Los Angeles County District Attorney's Office
Moms Demand Action for Gun Sense in America
National Association of Social Workers, California Chapter
Students Demand Action for Gun Sense in America
Women for American Values and Ethics

OPPOSITION: (Verified 6/28/22)

American Civil Liberties Union California Action
California Rifle & Pistol Association Incorporated
Gun Owners of California
National Rifle Association

ARGUMENTS IN SUPPORT: Everytown for Gun Safety Action Fund, Moms Demand Action for Gun Sense in America, and Students Demand Action for Gun Sense in America write in support:

“SB 1327 strengthens California gun laws by empowering individuals to bring civil actions against those who manufacture, distribute, transport, import into California, or sell dangerous and illegal assault weapons and ghost guns. This measure continues California’s record as a pioneer in

commonsense gun reform and offers a new tool to combat the rise in gun violence and keep communities safe.”

ARGUMENTS IN OPPOSITION: American Civil Liberties Union California Action writes:

“Despite being framed as a gun regulation, we understand that this bill is sponsored by Governor Newsom – knowing that it is an attack on the constitution – in a proxy battle meant to deter the United States Supreme Court from upholding a virtually identical law enacted in Texas to rescind abortion rights. We admire and share the Governor’s commitment to reproductive freedom, and we do not take issue with his legitimate concerns about the deadly proliferation of illegal guns. But there is no way to ‘take advantage of the flawed logic’ of the Texas law. No worthy motive and no permissible goal can justify such a radical and dangerous assault on our constitutional structure. Replicating the reprehensible Texas model only serves to legitimize and promote it, as evidenced by the copycat measures already enacted in some states, with many more pending around the country.”

ASSEMBLY FLOOR: 52-21, 6/27/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Blanca Rubio, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Mayes, Nguyen, Patterson, Salas, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Chen, Cooley, Cooper, Grayson, Holden, Robert Rivas, Rodriguez

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
6/28/22 14:22:54

**** END ****

EXHIBIT C

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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

Subject: *Firearms: private rights of action*

HISTORY

Source: Governor Gavin Newsom

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

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

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

PURPOSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This bill authorizes any person, other than an officer or employee of a state or local governmental entity in this state, to bring a civil action against any person who knowingly does any of the following:

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

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

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

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

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

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

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

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

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

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

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

This bill includes various governmental immunity and severability provisions.

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

COMMENTS

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

1. Need for This Bill

According to the author:

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

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

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

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

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

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

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

2. Replicating the Texas Model

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

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

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

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

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

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

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

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

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

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

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

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

3. The Status of California’s Assault Weapons Laws

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

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

⁷ *Id* at 5.

⁸ *Whole Woman’s Health v. Jackson* (2021) 142 S. Ct. 522, 530. https://www.supremecourt.gov/opinions/21pdf/21-463_3ebh.pdf

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

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

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

¹¹ Penal Code §§30500 et. seq.

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

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

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

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

4. Duplication of Penal Code Provisions

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

¹³ Penal Code §30515(a).

¹⁴ Penal Code §30600.

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

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

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

¹⁸ *Id.* at 1.

¹⁹ *Id.* at 2.

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

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

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

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

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

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

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

²² PC §§ 30315(d)(3) and 16531(b)

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

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

²⁵ AB 1621 defines “firearm precursor part” as “any forging, casting, printing, extrusion, machined body or similar article that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted.”

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

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

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

6. Related Legislation – AB 1594 (Ting)

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

7. Argument in Support

According to the Consumer Attorneys of California:

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

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

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

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

8. Argument in Opposition

According to Gun Owners of California, Inc.:

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

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

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

-- END --

EXHIBIT D

SENATE THIRD READING
SB 1327 (Hertzberg and Portantino)
As Amended June 23, 2022
Majority vote

SUMMARY

Among other things, authorizes any resident of California or visitor to California, other than an officer or employee of a state or local governmental entity in this state, to bring a civil action against any person who knowingly traffics illegal firearms and firearm *precursor* parts in the state, *or who sells, supplies, delivers, or gives possession or control of a firearm to any person who is under 21 years of age.*

Major Provisions

- 1) *Largely* duplicates, in newly enacted sections of the Business and Professions Code, provisions of the Penal Code that regulate the manufacturing, transportation, importation, and distribution of assault weapons, .50 BMG rifles, and unserialized firearms; and prohibit the sale, offering or exposing for sale, and giving or lending of any assault weapon, .50 BMG rifle, or unserialized firearm, except as provided.
- 2) *Makes it a violation of the bill to do either of the following:*
 - a) *Purchase, sell, offer to sell, or transfer ownership of any firearm precursor part in this state that is not a federally regulated firearm precursor part.*
 - b) *Sell, supply, deliver, or give possession or control of a firearm to any person who is under 21 years of age, except as provided.*
- 3) Authorizes any person, other than an officer or employee of a state or local governmental entity, to bring a civil action against any person who knowingly does any of the following:
 - a) Violates any of the above;
 - b) Engages in conduct that aids or abets a violation, regardless of whether the person knew or should have known that the person aided or abetted would be in violation; or
 - c) Commits an act with the intent to engage in the conduct described above.
- 4) Clarifies that it is exclusively enforced through the above private civil action and that no enforcement may be taken or threatened by this state, a political subdivision, a district or county or city attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided. Nor shall any civil action predicated upon a violation be brought by this state, a political subdivision, a district or county or city attorney, or an executive or administrative officer or employee of this state or a political subdivision. Further prohibits this state, a state official, or a district, county, or city attorney from intervening in these actions.
- 5) Establishes broad venue rules for these civil actions and restricts the ability to transfer venue.

- 6) Provides that it is inoperative and is thereafter repealed upon the total invalidation of a specific provision of Texas law by the United States Supreme Court or the Texas Supreme Court.
- 7) Provides that any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, a governmental entity or public official in this state, or a person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, or that represents any litigant seeking that relief, is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.
- 8) Provides, for purposes of 6), that a party is considered a "prevailing party" if a court does either of the following:
 - a) Dismisses any claim or cause of action brought by the party seeking the declaratory or injunctive relief described by subdivision (a), regardless of the reason for the dismissal.
 - b) Enters judgment in favor of the party opposing the declaratory or injunctive relief described by subdivision (a) on any claim or cause of action.
- 9) Includes a severability clause.

COMMENTS

This bill would authorize any resident of, or visitor to, California, other than an officer or employee of a state or local governmental entity in this state, to bring a civil action against any person who knowingly traffics in illegal firearms and in firearm parts in the state. It would also make any person who sues the state (or any political subdivision, a governmental entity or public official in this state), or a person (i.e. a plaintiff who brings a cause of action under the bill), seeking to prevent the enforcement of any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, jointly and severally liable for the attorney's fees and costs of the prevailing party. It also provides a definition of "prevailing party" that strongly favors the party opposing such an action.

These provisions, according to the bill's authors and supporters, would supplement the public law enforcement entities that now enforce the state's existing firearm laws restricting the sale, distribution, importation, and possession of the generally illegal firearms (and to some extent the firearm precursor parts) at issue in the bill.

In fact, the connection between the Texas law and the bill, is explicit in the bill itself. One provision provides that if and when the Texas law were invalidated, the bill would become inoperative:

This chapter shall become inoperative upon invalidation of Subchapter H (commencing with Section 171.201) of Chapter 171 of the Texas Health and Safety Code in its entirety by a final decision of the United States Supreme Court or Texas Supreme Court, and is repealed on January 1 of the following year.

The clear premise of the bill is that if Texas can use a clever scheme of private enforcement of quasi-criminal laws to avoid federal supremacy and infringe on constitutional rights which its

Legislature and Governor do not favor, then California should use a similar scheme to carry out its own restrictions that could infringe on constitutional rights in order to achieve its policy priorities and goals. The author acknowledges the distinction between this bill and SB 8:

By enacting its abortion ban, Texas is knowingly infringing upon a well-established constitutional right. However, while the Supreme Court recognizes an individual constitutional right to bear arms, it certainly does not recognize a constitutional right to own, manufacture, or sell an illegal assault weapon or ghost gun.

According to the Author

Violent, gun-related crime is skyrocketing across the state. Continuing California's record as a pioneer in commonsense gun reform, SB 1327 offers a new tool to combat the rise in gun violence and save lives – a private enforcement scheme. Modeled on the structure of Texas' recent abortion ban, SB 1327 allows private citizens to sue anyone who manufactures, distributes, transports, imports, or sells assault weapons, .50 BMG rifles, ghost guns, or ghost gun kits in California.

The author explains the logic of using Texas law as a model for this bill:

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

Arguments in Support

Everytown for Gun Safety, Moms Demand Action, and Students Demand Action write in a joint letter:

SB 1327 strengthens California gun laws by empowering individuals to bring civil actions against those who manufacture, distribute, transport, import into California, or sell dangerous and illegal assault weapons and ghost guns. This measure continues California's record as a pioneer in commonsense gun reform and offers a new tool to combat the rise in gun violence and keep communities safe.

The Los Angeles County District Attorney's Office writes:

SB 1327 does not interfere with a prosecutor's ability to enforce existing criminal statutes involving illegal firearms. Rather, it ensures the continued enforcement of California's gun laws by utilizing the same legal mechanism authorized by Texas' anti-abortion law.

Arguments in Opposition

ACLU California Action writes:

We admire and share the Governor's commitment to reproductive freedom, and we do not take issue with his legitimate concerns about the deadly proliferation of illegal guns. But there is no way to 'take advantage of the flawed logic' of the Texas law. No worthy motive and no permissible goal can justify such a radical and dangerous assault on our constitutional structure. Replicating the reprehensible Texas model only serves to legitimize and promote it,

as evidenced by the copycat measures already enacted in some states, with many more pending around the country

This legal framework is unsound and invalid no matter what activity it is directed at because it eviscerates basic principles of constitutional government by destroying an individual's ability to petition a court to block the state from violating a legal right. . . . Because we oppose restricting Californians' access to justice through the court system, we cannot stand silently by while California leaders escalate an "arms race" of new weapons to curtail the adjudication of rights by setting up bounty-hunting schemes on politically sensitive issues, particularly at a time when so many of our rights across this nation are under attack: the right to access abortion, contraception, and gender-affirming care, and the right to vote, to name just a few examples [footnotes omitted].

California Rifle & Pistol Association opposes the bill for a number of reasons, including the following:

This is another misguided bill that seeks to quash and discriminate against the rights of those engaged in lawful commerce to restrict law abiding citizen's access to firearms instead of holding accountable those that misuse firearms. . . . If passed it will result in distracted law enforcement and wasted tax dollars. It will be challenged, and it will be repealed.

FISCAL COMMENTS

According to the Assembly Appropriations:

- 1) Costs (General Fund (GF)) of \$479,000 in fiscal year (FY) 2022-23, \$771,000 in FYs 2023-24 and 2024-25, \$591,000 in FY 2025-26, and \$383,000 annually thereafter to the Department of Justice (DOJ) in additional staff and resources to handle litigation directed at the legislation and provide written guidance on prohibited precursor parts.
- 2) Cost pressure (Trial Court Trust Fund (TCTF)) in the mid-to-upper-hundreds of thousands of dollars to the trial courts in increased workload to hear and adjudicate civil actions against a person who sells an illegal firearm. As with any civil action for damages, a plaintiff is entitled to a jury trial. It is unclear how many new actions will be filed statewide, but if 10 cases are filed in state civil court annually requiring seven to ten days, or 56 to 80 hours, of court time, at an average cost per hour of \$1,000 in workload, the cost to the trial courts would be between \$560,000 and \$800,000 annually. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the to perform existing duties.

VOTES

SENATE FLOOR: 24-10-6

YES: Allen, Atkins, Becker, Bradford, Durazo, Eggman, Glazer, Gonzalez, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Hurtado, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Archuleta, Caballero, Cortese, Dodd, Hertzberg, Roth

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Page 5

ASM JUDICIARY: 8-2-1

YES: Stone, Bloom, Haney, Kalra, Maienschein, Reyes, Robert Rivas, Wilson

NO: Cunningham, Davies

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 11-4-1

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Davies, Fong

ABS, ABST OR NV: Eduardo Garcia

UPDATED

VERSION: June 23, 2022

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

FN: 0003029

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CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *South Bay Rod & Gun Club, Inc. v. Bonta*
Case No.: 3:22-cv-01461-RBM-WVG

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION**

on the following parties by electronically filing the foregoing on October 17, 2022, with the Clerk of the District Court using its ECF System, which electronically notifies them.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 17, 2022, at Long Beach, CA.

/s/Christina Castron
CHRISTINA CASTRON