SENIOR COUNSEL
C. D. Michel*

SPECIAL COUNSEL
Joshua R. Dale
W. Lee Smith

ASSOCIATES
Anna M. Barvir
Sean A. Brady
Scott M. Franklin
Thomas E. Maciejewski
Clint B. Monfort
Tamara M. Rider
Joseph A. Silvoso, III
Los Angeles, CA

*Also admitted in Texas
*Also admitted in District of Columbia

MICHEL & ASSOCIATES, P.C.
Attorneys at Law
Firearms - Environmental - Land Use - Employment Law
Civil Litigation - Criminal Defense

180 East Ocean Boulevard • Suite 200
Long Beach • California • 90802
562-216-4444 • www.michellawyers.com

OF COUNSEL
Don B. Kates
Battleground, WA

Ruth P. Haring
Matthew M. Horeczko
Los Angeles, CA

Glenn S. McRoberts
San Diego, CA

AFFILIATE COUNSEL
John F. Machtinger
Jeffrey M. Cohon
Los Angeles, CA

David T. Hardy
Tucson, AZ

MEMORANDUM OF LAW

Re: 2013 California Firearms-Related Legislation: End of Session Report

Date: October 16, 2013

This memorandum was prepared in response to inquires from California gun owners about the impacts of firearms-related legislation passed and defeated in 2013, as well as inquires about past, current and planned opposition efforts by the NRA relating to many of these bills.

Although many more bills were closely tracked and/or opposed[1] by the NRA that ultimately died, **the following is a summary of the more significant <u>bills that were DEFEATED in 2013</u>.**

Assembly Bill 174: This bill would have banned the possession of any firearm, magazine, or ammunition that was previously "grandfathered in" by previous legislation. Registered semi-automatic rifles, off-roster firearms, and standard-capacity magazines were all potentially subject to confiscation if AB 174 was signed into law. This bill was defeated in the legislature.

Assembly Bill 108: This bill would have placed criminal liability on gun owners for failing to lock their firearms away every time they left the house, regardless of whether anyone would be present in the home. This bill was defeated in the legislature.

[1] In addition to behind the scenes lobbying efforts, the NRA submitted numerous opposition and veto request letters. For some of the bills opposed during the 2013 legislative session, the NRA has made their veto request letters available for public review.

Senate Bill 47: This bill would have banned the sale and future possession of any semi-automatic centerfire rifle equipped with a "bullet button," and would have required these existing rifles to be registered as "assault weapons." This bill was defeated in the legislature.

Senate Bill 53: This bill would have banned online and mail-order sales of all ammunition. SB 53 would also have required registration and thumb printing of all ammunition statewide. This legislation was another attempt to circumvent NRA-supported litigation (*Parker v. California*) that overturned a previous version of this law that applied only to "handgun ammunition" because that term was unconstitutionally vague as defined. Governor Brown vetoed similar legislation in 2011 because this case was still ongoing. Because the case is still pending a decision by the California Court of Appeals, SB 53 failed to make it out of the legislature.

Senate Bill 396: This bill would have banned the possession, and required confiscation of, all existing standard-capacity magazines greater than ten rounds. This bill was defeated in the legislature.

Senate Bill 293: This bill would have required that, effective two years after two "owner-authorized handguns" are placed on California's roster of approved handguns, any further handguns placed on the roster must be "owner authorized."

Assembly Bill 169: When it was introduced, this bill would have banned the transfer of "off-roster" handguns. It was subsequently amended and removed the "single-shot exemption" for off-roster handguns and to limit the transfer of "off-roster" handguns to two per year. The bill was vetoed by the Governor. To view Governor Brown's veto message, click here. To view NRA's veto request letter click here.

Senate Bill 374: This bill would have banned the sale and future possession of all semi-automatic centerfire rifles capable of accepting a detachable magazines. This bill was vetoed by the Governor after reviewing pictorial displays assembled for him by the NRA of the classic hunting rifles SB 374 would have classified as "assault weapons" and banned from sale. To view the NRA's veto request letter click here. To view Governor Brown's veto message click here. The NRA also announced and prepared litigation that it was prepared to immediately file against the State if SB 374 was signed into law.

Assembly Bill 180: This bill would have authorized the repeal of state firearms preemption for certain locales with respect to the licensing and registration of firearms. If passed, these locales were expected to enact licensing schemes that would make it extremely difficult to legally own a firearm. This bill was vetoed by the Governor. To view Governor Brown's veto message click here. To view NRA's veto request letter click here.

Senate Bill 299: This bill would have imposed criminal liability on gun owners for failing to report the theft of their firearm within seven days. This bill was vetoed by the Governor. To view Governor Brown's veto message click here. To view NRA's veto request letter click here.

Senate Bill 475: This bill would have effectively banned gun shows at the Cow Palace by requiring special approval of the board of supervisors of the Counties of San Mateo and San Francisco prior to any gun shows. This bill was vetoed by the Governor. To view Governor Brown's veto message click here. To view NRA's veto request letter click here.

Senate Bill 567: This bill would have redefined shotguns to include any firearm that may be fired through a rifled bore or a smooth bore, regardless of whether it is designed to be fired from the shoulder. SB 567 would have effectively banned the sale of shotguns encompassed by the revised definitions that have a revolving cylinder, and required registration of these currently owned shotguns. To view Governor Brown's veto message click here. To view NRA's veto request letter click here.

Senate Bill 755: This bill would have drastically expanded the list of persons prohibited from owning a firearm to include many persons convicted of non-violent and drug or alcohol-related offenses. To view Governor Brown's veto message click here. To view NRA's veto request letter click here.

Thankfully, each of these bills were defeated and did not become law. Gun owners are to be commended for their efforts. Remember, freedom isn't free. To contribute to the NRA's ongoing efforts to fight back current and proposed legislation, click here.

The following is a summary of each of the firearm and/or hunting-related bills that were SIGNED into law in 2013. These summaries are intended to answer some of the questions raised by California gun owners about the impacts these bills will have on them, and to provide an update on any planned and/or ongoing litigation relating to each bill. The NRA's attorneys and lobbyists work hand in hand on a daily basis, with litigation efforts supporting ongoing legislative lobbying efforts, and vice-versa.

Senate Bill 140: This bill was signed into law as an emergency measure early in the legislative session. SB 140 authorized the California Department of Justice to raid monies in the "DROS Account" collected from law-abiding gun owners for background checks to fund the state's general law enforcement efforts. The NRA has already filed litigation, *Gentry v. Harris*, to stop DOJ from continuing to stick law-abiding gun owners with the bill for its general law enforcement projects, by challenging the appropriation of these funds as an invalid tax.

Assembly Bill 711: This bill will eventually ban the use of lead ammunition for hunting in California. Under AB 711, the Department of Fish and Game has until July 1, 2015, to adopt regulations making it illegal for anyone in California to take any game or non-game animal with lead-based ammunition. The regulations are to be in effect no later than July 1, 2019. Accordingly, California's current rules about the use of lead-based ammunition may not change for a couple of years, although no one knows exactly how long it will take the Commission to translate AB 711 into an enforceable set of regulations. To view Governor Brown's signing message, click here. To view NRA's veto request letter click here.

Until AB 711 is incorporated into California's regulatory code, there are two lead ammunition restrictions applicable to hunters in California. The first, which bans the use of lead shot in taking waterfowl, is a federal law that has been in place for thirty years. 50 C.F.R. § 20.21(j). The second is California's "Condor Zone" lead ban, in effect since 2008, which primarily prohibits taking big game or coyote with lead-based bullets in part of California's deer hunting Zone A south, and in all of the following deer hunting zones: D7, D8, D9, D10, D11, and D13. Cal. Fish & Game Code § 3004.5. This limited ban is currently the law, and will continue to be the law once AB 711 is fully codified by the Commission. Thus, in the hunting areas mentioned above, big game and coyote hunters must now and in the future use "nonlead" centerfire rifle and pistol ammunition, "nonlead" ammunition being those cartridges listed on the Commission's list of "certified centerfire rifle and pistol ammunition." The Condor

Zone lead ban not only prevents the use of lead-based ammunition in the Condor Zone for certain hunting applications, it also prevents hunters, while hunting, from possessing the combination of 1) lead-based ammunition and 2) a firearm capable of firing that lead-based ammunition.

Once regulations are enacted pursuant to AB 711, the general rule in California will be that it will be illegal to engage in any kind of hunting with a firearm, including depredation hunting, with traditional, lead-based ammunition. The limited ban for the Condor Zone will go from a limited lead restriction to a complete restriction when the AB 711 regulations go into effect for the whole state.

AB 711 allows, but does not require, the Director of California's Department of Fish & Wildlife to temporarily suspend the ban for any caliber of non-lead ammunition that is not "commercially available" "because of federal prohibitions relating to armor-piercing ammunition pursuant" to federal law. If this exception is triggered, it will not apply to any ammunition use that is currently illegal under to 2008 Condor Zone ban.

The NRA undertook a massive opposition and public outreach campaign (www.huntfortruth.org) utilizing scientists, lobbyists, experts, lawyers, public relations professions to combat California's misguided attempt to expand the lead ban ammunition ban statewide. The NRA will continue to fight against proposals to restrict the use of traditional ammunition (whether lead or otherwise) throughout the country.

The NRA will also be actively monitoring and working with the Commission during the regulatory process to protect the interests of hunters as much as possible, and to ensure that any regulations do not exceed the Commission's statutorily-granted rule-making authority. The NRA is also currently considering both its legislative and litigation options to overturn AB 711. Whether a viable legal challenge exists may depend on the outcomes of a number of cases concerning Second Amendment protections for ammunition that are currently working their way through the courts, including the NRA-supported California case of *Jackson v. City and County of San Francisco*, which seeks to confirm Second Amendment protections for hollow-point ammunition due to its effectiveness and commonality for both self-defense and hunting.

Assembly Bill 48: AB 48 adds "buying" and "receiving" to the list of activities prohibited under Penal Code Section 32310(a), which already prohibits the manufacture, importation, sale, offering for sale, giving, or lending of any standard-capacity magazine greater than ten rounds (aka "large-capacity magazine").

AB 48 also defines manufacturing as "both fabricating a magazine and assembling a magazine from a combination of parts, including but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully-functioning "large-capacity magazine."

Finally, AB 48 bans the purchase, sale, offering for sale, giving, receiving and lending of any "large-capacity magazine" "conversion kit." The bill defines a "conversion kit" as "a device or combination of parts of a fully functioning "large-capacity magazine," including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a 'large-capacity magazine'."

Each of these provisions takes effect January 1, 2014.

Due to the unclear definition of "conversion kit" provided by AB 48, many questions have been raised about what this provision actually prohibits. Below are some answers our office has prepared in response to questions about AB 48:

Q: Does AB 48 prohibit magazine extenders?

A. Yes. Any device capable of converting an ammunition feeding device into a "large-capacity magazine" is prohibited under AB 48.

Q: Does AB 48 prohibit existing or new magazines that are not "large-capacity magazines," or parts for these magazines.

A: No. Nothing in the plain language of AB 48 nor its legislative history suggest this. Magazines that were lawful for sale prior to AB 48 remain lawful to sell and possess, as are their parts.

Q: Does AB 48 prohibit the purchase and sale of "large-capacity magazine" repair/rebuild kits?

A: It is unknown what items would be prohibited as a "combination of parts" of a fully-functioning large-capacity magazine, including but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a "large capacity magazine."

Because a "large capacity magazine" repair/rebuild kit does not really "convert" an existing magazine into a "large-capacity magazine," a plain reading of AB 48 suggests that rebuild kits would not be prohibited. Rather than "converting" an existing magazine, a rebuild kit might itself be unlawfully assembled into a "large-capacity magazine." According to the author's statements about the intent of AB 48 made before the Senate Public Safety Committee, however, AB 48 was intended to ban the sale of magazine rebuild kits. The confusion seems to have arisen based on the author's fundamental misunderstanding of how a rebuild kit might itself be used to assemble a large-capacity magazine, rather than to "convert" an existing magazine into a large-capacity magazine.

If a court finds that AB 48's definition of a conversion is not clear on it's face, it may turn to the bill's legislative history for clarification. And, while the author's comments alone may not be enough to convince a court that AB 48 applies to rebuild kits, it is impossible to know ahead of time. In any event, one City Attorney's office has already informed our office that they believe rebuild kits are prohibited under a plain reading of the text of AB 48, because the parts contained in a magazine rebuild kit are capable of being used with one or more parts of an ammunition feeding device to assemble a large-capacity magazine.

So, while it is unclear (at best) as to whether AB 48 prohibits the transfer of magazine rebuild kits, for the time being there is risk of criminal prosecution for transferring them.

Q: If I purchased a magazine rebuild kit or magazine extender prior to January 1, 2014, may I still continue to possess it?

Yes. Nothing in AB 48 prohibits the continued possession of any device or combination of parts purchased prior to January 1, 2014, so long as they are not assembled into, or used to assemble, a "large-capacity magazine."

Q: May I continue to possess my currently-possessed, grandfathered large-capacity magazines?

A: Yes. Nothing in the language of AB 48 is intended to prohibit the possession of grandfathered magazines. AB did include a provision that would have prohibited the possession of large-capacity magazines, and would have required existing "grandfathered" magazines to be surrendered, removed from the state, or destroyed. This provision did not become law, however, because SB 396 was defeated. This provision was included in AB 48 as well as SB 396 in case both bills had passed, so that the changes each bill would have made to the Penal Code would not be in conflict with one another. This is a common process in the legislature. Since SB 396 did not pass, existing grandfathered magazines remain lawful to possess.

Q: Is there any other way to repair existing "large-capacity magazines" without buying a rebuild kit?

A. Yes. Nothing in AB 48 or current law prohibits an individual from taking a grandfathered "large-capacity magazine" to a dealer for repair. The penal code expressly authorizes transfers of "large-capacity magazines" to a licensed firearms dealer for repair. Under CA law, licensed firearm dealers are authorized to obtain "large-capacity magazine permits" from the California Department of Justice, and many retailers maintain these permits. Accordingly, the dealer may order parts for the "large-capacity magazine" and complete any repairs.

To view NRA's veto request letter for AB 48, click here. The NRA is currently considering its litigation options to challenge California's ban on the sale, transfer, or importation of magazines greater than ten rounds, as well as pending local magazine capacity laws that are closely being closely monitored and opposed. The NRA is also currently supporting litigation challenging magazine capacity limitation laws in Colorado, New York, and Connecticut. These cases will set precedent in California to support a future challenge to California's magazine limitation laws.

Assembly Bill 231: Effective January 1, 2014, this bill will make it unlawful to store a firearm in a manner that a child is reasonably likely to gain access to a firearm without the owner's consent. The NRA is currently litigating the issue of whether and to what extent storage restrictions may be imposed under the Second Amendment in *Jackson v. City and County of San Francisco*. That case is currently pending a decision by the Ninth Circuit Court of Appeals. To view NRA's veto letter click here.

Senate Bill 363: Effective January 1, 2014, SB 363 will expand criminal liability to situations where others gain possession of your firearms. Specifically, you may be prosecuted if you keep a loaded firearm on your premises where you know, or reasonably should know that a person prohibited from possessing firearms under state or federal law may gain access to them, and that person either causes injury or death with the firearm, or actually takes possession and carries it off-premises. The NRA is currently litigating the issue of whether and to what extent storage restrictions may be imposed under the Second Amendment in *Jackson v. City and County of San Francisco*.

Assembly Bill 500: AB 500 places restrictions on firearm storage if you reside with someone who is prohibited from possessing firearms under state or federal law. Effective January 1, 2014, if you live with a prohibited, you cannot keep a firearm in the residence unless the firearm is either: 1) Kept within a locked container, locked gun safe, locked trunk, or locked with a locking device. 2) Disabled by a firearm safety device, or 3) Carried on your person. The NRA is currently litigating the issue of whether and to what extent storage restrictions may be imposed under the Second Amendment in *Jackson v. City and County of San Francisco*.

AB 500 also allows the Department of Justice to take an additional 30 days to complete DROS background checks if they are unable to determine a purchaser's prohibited status within ten days. If the DOJ is unable to make a determination after 30 days, AB 500 requires the DOJ to notify the dealer, and allows the dealer to transfer the firearm to the purchaser.

Senate Bill 683: This bill would expand California's handgun safety certificate requirement to apply to all firearms, and prohibits anyone from purchasing or transferring any firearm without a firearm safety certificate. To view NRA's veto request letter click here.

Assembly Bill 170: Effective January 1, 2014, AB 170 requires companies that obtain an "assault weapon" and/or .50 BMG permit from the California Department of Justice to have the permits issued in the name individual employees.

Assembly Bill 538: Effective January 1, 2014, this bill clarifies that licensed firearm dealers are to provide firearm purchasers with a copy of the Dealer's Record of Sale (DROS) paperwork.

Assembly Bill 539: Effective January 1, 2014, AB 539 allows for persons who become prohibited from owning or possessing firearms to transfer the firearms to a licensed firearms dealer to be held by the dealer during the time of the prohibition. For prohibited individuals who have already had their firearms seized by law enforcement, AB 539 allows the individual to have the firearms transferred to a licensed firearm dealer during the term of the prohibition.

Assembly Bill 1131: Under current law, anyone who communicates "a serious threat of physical violence against a reasonably identifiable victim" to a licensed psychotherapist is prohibited from possessing firearms and deadly weapons for a period of six months. Effective January 1, 2014, AB 1131 will increase this prohibition period from six months to five years. The bill also clarifies that, upon petition to the court, the state has the burden of showing that the person would not be likely to use firearms in a safe and lawful manner. If the state fails to make such a showing, the five-year prohibition will not apply. The California DOJ is required to mail notice of the restriction to the restricted person who may thereafter request a hearing to restore his or her firearm rights during the restriction period.

Senate Bill 127: If an individual communicates "a serious threat of physical violence against a reasonably identifiable victim" to a licensed psychotherapist, effective January 1, 2014, SB 127 will require the psychotherapist to report the threat to local law enforcement within 24 hours. The bill would require the local law enforcement agency receiving the report to notify the California Department of Justice electronically within 24 hours.

Assembly Bill 1213: Effective January 1, 2014, AB 1213 will make it unlawful to trap any bobcat, or attempt to do so, or to sell or export any bobcat or part of any bobcat taken in the area surrounding Joshua Tree National Park.

Keep in mind that litigation to challenge new and existing laws that will be filed at a later time may not be appropriate at this time until preliminary cases work their way through the courts. This is particularly true given that the "standard of review" for the Second Amendment is still unsettled. The NRA currently has three cases pending before the Ninth Circuit Court of Appeals, in additional to multiple state and federal cases that are working their way up. The NRA and our office are also heavily involved in litigation in other states that will be used as precedent in California in future cases. Also remember that in many cases funded by the NRA or litigated by NRA lawyers, the NRA isn't always the named plaintiff. To view a partial list of what the NRA has been doing on behalf of California gun owners through our office, click here.

Again, gun owners are to be commended for their efforts this legislative session. But remember, freedom isn't free. To contribute to the NRA's ongoing efforts to fight back against current and proposed legislation before the legislature, regulatory agencies, and in the court room, click here.

For Further Assistance:

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

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