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OFFICE OF THE DIRECTOR
STATE AND LOCAL AFFAIRS DIVISION

June 19, 2014

Members of the Senate Judiciary Committee
State Capitol Building
Sacramento, California 95814

RE: Assembly Bill 2310 (Ridley-Thomas and Dickerson)

Position: Oppose

Dear Members of the Senate Judiciary Committee:

On behalf of the National Rifle Association, I write to respectfully express our opposition to Assembly Bill 2310.

California Assembly Bill 2310 proposes to allow city attorneys in the counties of Los Angeles and Sacramento to initiate unlawful detainer actions against residents who have been arrested for any firearm-related crime. The NRA believes that AB 2310 is misguided for several reasons.

An unlawful detainer action is essentially a civil eviction through a court proceeding. Under California law, a person is guilty of unlawful detainer, and thus subject to eviction, if that person has committed a nuisance injurious to the health, safety and welfare of others while on his leased property, or otherwise violated provisions of his lease.

AB 2310 proposes to expand the definition of nuisance broadly to include any use of leased property for so-called "unlawful weapons or ammunition purposes." This bill defines "unlawful weapons or ammunition purpose" as any of the following: the illegal use, manufacture, causing to be manufactured, importation, possession, possession for sale, furnishing, or giving away of any of the following:

- (1) A firearm, as defined in subdivision (a) of Section 16520 of the Penal Code.
- (2) Any ammunition, as defined in subdivision (b) of Section 16150 of the Penal Code or in Section 16650 or 16660 of the Penal Code.
- (3) Any assault weapon, as defined in Section 30510 or 30515 of the Penal Code.
- (4) Any .50 BMG rifle, as defined in Section 30530 of the Penal Code.
- (5) Any tear gas weapon, as defined in Section 17250 of the Penal Code.

Accordingly, anytime a California resident is **arrested** for one of the above offenses, he or she could be evicted from his or her home—a conviction requiring proof beyond a reasonable doubt or guilty/no contest plea is not necessary. *Simply an arrest based on probable cause is enough evidence to initiate an unlawful detainer proceeding.*

The so-called “unlawful weapons or ammunition purpose” is defined so broadly that it can include any number of otherwise innocent or unknowing violations of California’s complicated and numerous weapons laws. For example, federal law does not restrict the transfer of firearms between two, non-prohibited persons residing in the same state. However, subject to limited exceptions, under California law, it is illegal to “give away” a firearm to another person without conducting the transfer through a California licensed firearm dealer. Penal Code § 27545. Additionally, even firearm transactions amongst family members are restricted. If “immediate” family members give each other firearms, the recipient must register the firearm within thirty days of receiving it, otherwise he or she is in violation of the law. Penal Code § 27875. Failing to comply with either of these requirements is a basis for eviction under AB 2310.

The real world application of this bill, if it became law, does not stop there. Persons prohibited from owning and possessing firearms often do not know they are prohibited either because of the failure of the court, their attorneys or their discharging hospital to properly advise them of their restriction. Recently, the California Department of Justice increased its enforcement of the Armed Prohibited Persons System and, quite often, a person is unaware they are prohibited from possessing firearms until the state DOJ knocks on their door.

Similarly, a person with a firearm restriction is prohibited from possessing ammunition. Penal Code § 30305(a)(1). This restriction includes “bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.” Penal Code § 16150. Accordingly, a person may often be aware of their firearm restriction but not understand that they may also not possess “ammunition.” AB 2310 would make possession of just one bullet by a person prohibited from possessing firearms grounds for an eviction.

There is similar confusion regarding the possession of illegal firearms. California still prosecutes otherwise lawful firearm owners under California’s restrictions on “assault weapons” and .50 BMG rifles. Often an owner of an “assault weapon” is unaware that his or her firearm meets one of the confusing definitions of an “assault weapon.” Or a firearm owner may mistakenly believe that his or her lawful firearm purchase in the 1980s or 1990s somehow “automatically registered” the firearm and/or the firearm was “grandfathered in,” and thus exempt from California’s gun registration requirements. Again, confusion, with no actual criminal intent, will be enough to evict a tenant.

And there are items being sold all the time in California that will result in evictions. For example, camping and hunting supply stores often sell bear repellant. Unlike the small canisters of pepper spray or mace, however, these large canisters of repellant are considered “tear gas weapon” and are illegal to possess. Penal Code § 22810(e)(1).

In addition to expanding the definition of what constitutes a nuisance, AB 2310 also would allow attorneys that represent cities in Los Angeles and Sacramento County to initiate eviction proceedings, even if the landlord has no interest in evicting the tenant or doesn’t believe tenant poses a danger to the community. Accordingly, a landlord may be forced to lose a completely upstanding tenant and find a replacement in the middle of a lease, as a result of an overzealous city attorney prosecuting even the most minor violations of California’s many gun laws. And, to add insult to injury, AB 2310 forces landlords who do not want to evict their tenants to reimburse the city for the costs of pursuing an eviction.

On the flipside, landlords who do not like particular tenants could use AB 2310 as a tool to evict tenants they no longer want, have philosophical differences with (i.e. firearm owners) or drive out tenants in rent controlled or low rent apartments to drive up rent.

In addition to creating these problems for landlords and tenants, AB 2310 will create tremendous ethical dilemmas for city attorneys prosecuting the unlawful detainer action. California State Rule of Professional Responsibility 2-100 provides: "While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer." As part of the eviction process under AB 2310, however, city attorneys are required to send notice to tenants arrested for "unlawful weapons or ammunition purposes." These people are likely to be charged for the crime for which they were arrested, and thus represented by a lawyer in their criminal cases. Accordingly, AB 2310 will inevitably lead to city attorneys discussing the facts of an ongoing criminal case with tenants who are charged with a crime and represented by counsel. This is an abject violation of California's Professional Responsibility Rules; as it should be. After all, anything a tenant says while discussing the case with a city attorney may be used as evidence used to convict him or her in the underlying criminal case.

Furthermore, consider the consequences of evicting people for these and other minor firearm-related offenses. Those hit hardest by AB 2310 will undoubtedly be poor and urban residents of California who, out of necessity, tend to rent in disproportionately high numbers. AB 2310 would subject otherwise innocent members of these communities to eviction just for being arrested for a crime relating to firearms. As a result they will not only be forced from their homes, but will also have an eviction permanently on their record, thus making it difficult, if not impossible, to find future housing. Thus AB 2310 is much more likely to endanger the health, safety and welfare of the community than to assist it.

And this is without even mentioning that notice of a potential eviction will only be provided in the languages specified in Civil Code § 1632, which only includes English, Spanish, Chinese, Tagalog, Vietnamese or Korean. Accordingly 17% of Californian non-English speaking populations, who speak languages such as Arabic, Russian or Japanese may have no idea that an eviction proceeding may be initiated against them. These citizens will likely have default judgments entered against them because they were unaware of the proceeding.

Finally, the research provision included in AB 2310 has a gaping hole. Although AB 2310 is only initially applicable to Los Angeles and Sacramento Counties, the drafters of this bill added an extensive research provision to it with the clear intention of gathering data to use in making the case to later expand AB 2310's coverage to other areas of California or the entire state. That research provision is fundamentally flawed, however, because it does not require the California Research Bureau to report when an individual's case is dismissed, never filed, found not guilty at trial or received a finding of factual innocence. AB 2310 is not designed to report potential abuses of the system only how "effective" the process is. Accordingly, when making the decision to expand AB 2310, California lawmakers will not have valuable information concerning the abuses of the system and how many people lost their home despite never being convicted of the underlying offense.

For all of the foregoing reasons, the NRA respectfully requests your opposition to AB 2310.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck G.", with a stylized flourish at the end.

Charles H. Cunningham
Director of State and Local Affairs