SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 1446	**Hearing Date:**	April 19, 2016
Author:	Hancock		
Version:	March 28, 2016		
Urgency:	No	**Fiscal:**	Yes
Consultant:	JRD		

Subject: ***Firearms: Magazine Capacity***

HISTORY

Source: Author

Prior Legislation: SB 396 (Hancock) – failed on the Assembly Floor, subsequently amended, 2013
SB 776 (Hancock) – died in this Committee, 2009
SB 23 (Perata) - Chap. 129, Statutes of 1999
Roberti-Roos Assault Weapons Control Act of 1989 (Chapter 19, § 3, Stats. of 1989.)

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

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

PURPOSE

The purpose of this bill is to, commencing July 1, 2017, prohibit the possession of large-capacity magazines, as specified.

Current federal law, the federal assault weapons law (the Violent Crime Control and Law Enforcement Act, H.R. 3355, Pub.L. 103-322,) became effective on September 13, 1994, and banned the possession of "assault weapons" and "large capacity ammunition feeding devices," defined as a magazine capable of holding more than ten rounds of ammunition, manufactured after that date. That law expired in 2004 and has not been reenacted.

Existing law defines a "large-capacity magazine" as any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.
- A .22 caliber tube ammunition feeding device.
- A tubular magazine that is contained in a lever-action firearm.

(Penal Code § 16740.)

Existing law provides that, except as specified, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment for 16 months, two or three years pursuant to penal code section 1170(h). "Manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine. (Penal Code § 32310.)

Existing law provides that, commencing January 1, 2014, any person in this state who knowingly manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large capacity magazine conversion kit is punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail not to exceed six months, or by both that fine and imprisonment. This section does not apply to a fully assembled large-capacity magazine. A "large capacity magazine conversion kit" is a device or combination of parts of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine. (Penal Code § 32311.)

Existing law provides that, upon a showing that good cause exists, the Department of Justice may issue permits for the possession, transportation, or sale between a licensed firearms dealer and an out-of-state client, of large-capacity magazines. (Penal Code § 32315.)

Existing law provides that, except as specified, any large-capacity magazine is a nuisance and is subject to an injunction against its possession, manufacture or sale, and is subject to confiscation and summary destruction. (Penal Code § 32390.)

This bill provides that, except as specified, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars ($100) upon the first offense, by a fine not to exceed five hundred dollars ($500) upon the third or subsequent offense.

This bill requires that a person who, prior to July 1, 2017, legally possesses a large-capacity magazine dispose of that magazine by any of the following means:

- Remove the large-capacity magazine from the state.

- Prior to July 1, 2017, sell the large-capacity magazine to a licensed firearms dealer.
- Destroy the large-capacity magazine.
- Surrender the large-capacity magazine to a law enforcement agency for destruction.

This bill exempts the following:

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

This bill makes a number of conforming changes to the Penal Code.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

> In 1999, the Legislature passed SB 23 (Perata) which prohibited the possession of assault weapons, such as the AK-47 and created a generic definition of an assault weapon. As part of that legislation, the importation, manufacture and sale of large capacity ammunition magazines was strictly prohibited. However, the possession of high capacity magazines was not prohibited.

> Federal law also outlawed possession of high capacity magazines as part of the 1994 federal assault weapons ban but allowed current owners to keep them under a "grandfathering" provision. The federal assault weapons ban was allowed to expire in 2004. Research has shown that, prior to the implementation of the federal assault weapons ban, these high capacity magazines were used in between 14 and 26% of guns used in crime.
>
> High capacity ammunition magazines are ammunition feeding devices that hold more than ten rounds of ammunition. These mega-magazines can hold upwards of 100 rounds of ammunition and allow a shooter to rapidly fire without reloading.
>
> High capacity magazines are not designed for hunting or target shooting. High capacity magazines are military designed devices. They are designed for one purpose only -- to allow a shooter to fire a large number of bullets in a short period of time.
>
> This bill will make clear that possession of these "mega-magazines" is also prohibited. Law enforcement officers have told us that, because the Penal Code currently fails to specifically prohibit possession, the law is very difficult to enforce. This needs to be fixed and this measure addresses that by prohibiting the possession.

2. High Capacity Magazines in Both Long Guns and Handguns

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

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

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

(http://www.vpc.org/fact_sht/VPCshootinglist.pdf.)

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

Church, in Charleston, South Carolina, left nine people dead. The perpetrator used 13-round magazines. (*Id.*)

3. California: Local Ordinances Banning the Possession of Large-Capacity Magazines

San Francisco, Sunnyvale and, most recently, Los Angeles have enacted ordinances that prohibit the possession of large-capacity magazines. These ordinances are consistent with the provisions of this legislation.[1] Each of these ordinances has been challenged and litigation is on-going.

San Francisco's ordinance was challenged on Second Amendment grounds. *San Francisco Veteran Police Officers Association v. the City and County of San Francisco*, 18 F.Supp. 3d 997, 999-1002 (ND Cal. 2014.) The district court denied the plaintiff's motion for a preliminary injunction:

> Here, the balance of the equities lies in favor of San Francisco. If a preliminary injunction is denied, then plaintiffs will have to resort to using magazines that can accept ten rounds or fewer. Moreover, San Francisco will return plaintiffs' surrendered magazines back to them if the ordinance is ultimately found unconstitutional. These considerations are vastly outweighed by the demonstrated need to remove magazines from circulation that are capable of accepting more than ten rounds. Such magazines allow mass killers to shoot more victims before reloading, multiplying the number of deaths (Zimring Decl. ¶¶ 16-19). If a mass murderer has to reload because he or she does not have a magazine with the capacity to accept more than ten rounds, there is a better chance that someone present will subdue him or her sooner (Van Aken Decl., Exhs. 18, 22-23).
>
> Although there will be some occasions when a law-abiding citizen needs more than ten rounds to defend himself or his family, the record shows that such occasions are rare. This will be even rarer in a dense urban area like San Francisco where police will likely be alerted at the outset of gunfire and come to the aid of the victim. Nonetheless, in those rare cases, to deprive the citizen of more than ten shots may lead to his or her own death. Let this point be conceded. In assessing the balance of equities, those rare occasions must be weighed against the more frequent and documented occasions when a mass murderer with a gun holding eleven or more rounds empties the magazine and slaughters innocents. One critical difference is that whereas the civilian defender rarely will exhaust the up-to-ten magazine, the mass murderer has every intention of firing every round possible and will exhaust the largest magazine available to him. On balance, more innocent lives will be saved by limiting the capacity of magazines than by allowing the previous regime of no limitation to continue.
>
> (*Id.* at 1005.)

Similarly, Sunnyvale's ordinance was challenged on Second Amendment grounds. The district could denied the plaintiff's preliminary injunction motion, holding that the plaintiffs were unlikely to succeed on the merits given Sunnyvale's "compelling government interest of public

[1] This legislation differs from the ordinances insofar as it makes possession of a large-capacity magazine an infraction, rather than a misdemeanor.

safety." (*Fyock v. the City of Sunnyvale*, 25 F.Supp.3d 1267, 1281 (ND Cal. 2014.).) The court stated:

> [P]revention of gun violence lies at the heart of the Sunnyvale ordinance. See Spitaleri Decl. Exh. A at 1 ("the People of Sunnyvale find that the violence and harm caused by and resulting from both the intentional and accidental misuse of guns constitutes a clear and present danger to the populace, and find that sensible gun safety measures provide some relief from that danger and are of benefit to the entire community"). Sunnyvale submits substantial evidence that a ban on the possession of magazines having a capacity to accept more than ten rounds may reduce the threat of gun violence. For example, Professor Koper opines in his declaration that the Sunnyvale law "has the potential to (1) reduce the number of crimes committed with [large capacity magazines]; (2) reduce the number of shots fired in gun crimes; (3) reduce the number of gunshot victims in such crimes; (4) reduce the number of wounds per gunshot victim; (5) reduce the lethality of gunshot injuries when they do occur; and (6) reduce the substantial societal costs that flow from shootings." Koper Decl. ¶ 57. Professor Koper, relying on a study assessing the 1994 federal assault weapons ban, also states that magazines having a capacity to accept more than ten rounds "are particularly dangerous because they facilitate the rapid firing of high numbers of rounds. This increased firing capacity thereby potentially increases injuries and deaths from gun violence." Id. ¶ 7. Studies also show that the banned magazines are used in 31% to 41% of gun murders of police. Id. ¶ 18.
>
> Plaintiffs respond that Sunnyvale's ordinance will have little effect because criminal users of firearms will not comply with the law. Kleck Decl. ¶¶ 28-29. However, Sunnyvale provides data showing that, among 69 mass shootings, 115 of 153—or 75%—of the guns used were obtained legally. Allen Decl. ¶ 18. Professor Koper refutes this argument with evidence that prohibitions on magazines having a capacity to accept more than ten rounds reduce the availability of such magazines to criminals. Id. ¶ 47-52. In that sense, even if the Sunnyvale law has minimal compliance among potential criminal firearm users and is difficult to enforce by police, it may still reduce gun crime by restricting the banned magazines' availability.
>
> Plaintiffs also argue that Sunnyvale's ban will have a negative impact on public safety because it imposes magazine size limits on those acting in self-defense. This evidence is relatively unpersuasive for three reasons. First, studies of the NRA Institute for Legislative Action database demonstrates that individuals acting in self-defense fire 2.1-2.2 shots on average. Allen Decl. ¶¶ 6-9. It is rare that anyone will need to fire more than ten rounds in self-defense. Id. Second, although Plaintiffs provide several anecdotes of instances when having a magazine with the capacity to accept more than ten rounds was necessary for self-defense, Plaintiffs do not supply any quantitative data showing that banning such magazines would negatively impact public safety. See Ayoob Decl. ¶¶ 5-16. The fact that Plaintiffs only present anecdotal examples rather than quantitative studies suggests that in only very rare circumstances is it necessary to possess a larger magazine in self-defense.

> Finally, Plaintiffs' evidence does little to show that the Sunnyvale ordinance is not substantially related to the achievement of an important government interest. Means-end scrutiny is meant, inter alia, to subject laws to additional examination when there is a fear that they may trample on individual rights. *See Heller*, 554 U.S. at 634-35. Here, Plaintiffs are concerned that the Sunnyvale law infringes their Second Amendment rights, and Sunnyvale argues that its citizens voted for the law out of concern for public safety. Whether or not the law is ultimately effective is yet to be seen. But for now, Sunnyvale has submitted pages of credible evidence, from study data to expert testimony to the opinions of Sunnyvale public officials, indicating that the Sunnyvale ordinance is substantially related to the compelling government interest in public safety. While Plaintiffs present evidence that the law will not be successful, the court cannot properly resolve that question. The court is persuaded that Sunnyvale residents enacted Measure C out of a genuine concern for public safety, and that the law, with its many exceptions and narrow focus on just those magazines having a capacity to accept more than ten rounds, is reasonably tailored to the asserted objective of protecting the public from gun violence. (*Id.* at 1280-81.)

The Court goes on to state:

> The court concludes that Plaintiffs are not likely to succeed on the merits. Although Plaintiffs demonstrate that the Sunnyvale ordinance imposes some burden on Second Amendment rights, that burden is relatively light. The Sunnyvale law passes intermediate scrutiny, as the court—without making a determination as to the law's likely efficacy—credits Sunnyvale' s voluminous evidence that the ordinance is substantially tailored to the compelling government interest of public safety. This determination is based on the record as it stands at this early preliminary injunction stage of the case. At this time, the court only holds that, upon this surely incomplete record, Plaintiffs have failed to prove that they are likely to succeed on the merits. (*Id.* at 1281.)

Plaintiff's appealed this ruling to the Ninth Circuit Court of Appeals. The Ninth Circuit affirmed the ruling and upheld the Sunnyvale ordinance. (*Fyock v. City of Sunnyvale*, 799 F. 3d 991, 999-1001.)

4. The Fifth Amendment "Takings" Clause

The "takings clause" of the Fifth Amendment to the United States Constitution states: "nor shall private property be taken for public use without just compensation." California law already bans the import, manufacture and sale of high capacity ammunition magazines, and has declared them a nuisance and subject to confiscation and destruction. (Penal Code §§ 32310, 32390, 18010.) Nonetheless, the question has been raised whether adding criminal penalties for possession of these ammunition magazines would constitute a 'taking of private property for public use without just compensation,' in violation of the 5th Amendment.

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

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

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

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

> Petitioners' third constitutional challenge alleges that D.C. Code 1978 Supp., § 6-1820(c) provides for a taking of their property without just compensation in violation of the Fifth Amendment. That section of the Code provides three alternatives for disposition within seven days of a firearm denied registration. The unsuccessful applicant may (1) "peaceably surrender" the firearm to the chief of police, (2) "lawfully remove" the firearm from the District for as long as he retains an interest in the firearm, or (3) "lawfully dispose" of his interest in the firearm. Petitioners' argument is that the second and third alternatives require, under the terms imposed by the Federal Gun Control Act of 1968, 18 U.S.C. § 922 (1970), a quick "forced sale" of the firearms at less than fair market value to a dealer in firearms, while the first alternative would provide not even a salvage value return.
>
> Assuming, arguendo, that the statute authorized a "taking," we note that the Fifth Amendment prohibits taking of "private property . . . for public use, without just compensation." Such a taking for the public benefit under a power of eminent domain is, however, to be distinguished from a proper exercise of police power to prevent a perceived public harm, which does not require compensation. *Lamm v. Volpe,* 449 F.2d 1202, 1203 (10th Cir. 1971). That the statute in question is an exercise of legislative police power and not of eminent domain is beyond dispute. The argument of petitioner, therefore, lacks merit.

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

If banning possession of high capacity magazines, as this bill proposes, required that the state compensate all current owners of these items, the same requirement would be applicable to legislation that bans any dangerous weapon or substance. This would lead to absurd results. For example, in 2009 the Legislature approved a ban on importation, manufacture, sale or possession of hard plastic knuckles, a weapon that had often had a sharp edge and could pass undetected through a magnetometer. (AB 714 (Feuer) Chap. 121, Stats. of 2009, Penal Code § 21710.) The Legislature did not deem it necessary or appropriate to provide compensation to the owners of these weapons. Similarly, in 2008, legislation outlawed possession of a plant known as Khat, and

its synthetic equivalent due to fears of abuse due to its psychoactive properties. (AB 1141 (Anderson) Chap. 292, Stats. of 2008, Health and Safety Code § 11055.) Again, no compensation was offered to current owners of the plant or drug. Prohibiting possession of these dangerous weapons and substances was undertaken pursuant to the government's police power 'to prevent a perceived public harm,' and, accordingly, the Legislature did not deem it necessary to compensate current owners of these weapons or substances. As the Supreme Court has stated, "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." (*Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922).)

5. Exception for Retired Peace Officers

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

> We thus can discern no legitimate state interest in permitting retired peace officers to possess and use for their personal pleasure military-style weapons. Rather, the retired officers exception arbitrarily and unreasonably affords a privilege to one group of individuals that is denied to others, including plaintiffs.
>
> In sum, not only is the retired officers' exception contrary to the legislative goals of the AWCA, it is wholly unconnected to any legitimate state interest. A statutory exemption that bears no logical relationship to a valid state interest fails constitutional scrutiny. The 1999 AWCA amendments include, however, a severability provision providing that should any portion of the statute be found invalid, the balance of the provisions shall remain in force. Accordingly, because the retired officers' exception is an arbitrary classification in violation of the Fourteenth Amendment, we sever that provision, § 12280(h)-(i), from the AWCA.

(*Id.* at 1091-92.)

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

DOES THIS LEGISLATION RAISE FOURTEENTH AMENDMENT CONCERNS?

SHOULD THIS LEGISLATION CONTAIN A SEVERABILITY PROVISION SIMILAR TO THE AMENDMENTS TO THE AWCA?

6. Argument in Support

According to the California Chapters of the Brady Campaign to Prevent Gun Violence:

> Since January 2000, California law has prohibited the manufacture, importation, sale, gift, or loan of any large capacity ammunition magazine capable of holding more than ten rounds. SB 1446 is a narrow bill that would add a prohibition on *possessing* large capacity magazines, as defined in the bill, regardless of the date the magazine was acquired. Current and retired police officers would be exempt from the prohibition.

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

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

With average use, magazines typically last about twelve years. It is now time to end the grandfathering of large capacity magazines and exploitation of the law by prohibiting their possession. Serious hunters do not use large capacity magazines. A prohibition on the sale, transfer, and *possession* of large capacity magazines clearly furthers public safety. The California Brady Campaign Chapters appreciate your introduction of SB 1446 and are in full support.

7. Argument in Opposition

The Firearms Policy Coalition states in opposition to this bill:

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

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

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

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

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

According to the federal civil rights case Silveira v. Lockyer (9th Cir. 2002), 312 F.3d 1052, retired peace officers are not allowed to maintain the "assault weapons" they acquired through exemptions they held as active duty peace officers. When they became non-peace officers through separation from their employer, they became civilians.

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

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

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

-- END –