
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 710 **Hearing Date:** January 9, 2018
Author: Anderson
Version: February 17, 2017
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Silencers*

HISTORY

Source: American Suppressor Association

Prior Legislation: None

Support: Firearms Policy Coalition, National Shooting Sports Foundation, Inc.

Opposition: California Brady Campaign to Prevent Gun Violence

PURPOSE

The purpose of this bill is to delete the felony prohibition on possession of a silencer and to authorize an individual to use silencer or sound suppressing device to use that device to hunt a bird, mammal, fish, reptile, or amphibian for which the individual is licensed if the firearm to which the device is attached is lawfully possessed.

Existing federal law, under the National Firearms Act (NFA), imposes a tax on the making and transfer of firearms defined by the Act (26 USC 53; 27 CFR 479.)

Existing federal law states that the NFA applies to:

- a shotgun having a barrel or barrels of less than 18 inches in length;
- a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length;
- a rifle having a barrel or barrels of less than 16 inches in length;
- a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length;
- any other weapon, as provided;
- a machinegun;
- any silencer; and
- a destructive device.

(26 U.S.C. 5845; 27 CFR 479.11)

Existing federal law provides that there is a tax of \$200 for the transfer of any firearm subject to the NFA except a firearm classified as an “any other weapon” which is \$5. An unserviceable firearm may be transferred as a curio or ornament without payment of the transfer tax. (26 U.S.C. 5811, 5852(e) and 5845(h); 27 CFR 479.11, 479.82 and 479.91.)

Existing federal law states that “[t]he term “Firearm Silencer” or “Firearm Muffler” means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, any part intended only for use in such assembly or fabrication.” (18 U.S.C., § 921(A)(24).)

Existing California law provides that any person, firm, or corporation who within this state possesses a silencer is guilty of a felony and upon conviction thereof shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 or by a fine not to exceed ten thousand dollars (\$10,000), or by both that fine and imprisonment. (Penal Code § 33410.)

Existing California law exempts the following from the prohibition on silencers: (Penal Code § 33415.)

- The sale to, purchase by, or possession of silencers by listed law enforcement agencies, or the military or naval forces of this state or of the United States, for use in the discharge of their official duties.
- The possession of silencers by regular, salaried, full-time peace officers who are employed by the listed law enforcement agencies, or by the military or naval forces of this state or of the United States, when on duty and when the use of silencers is authorized by the agency and is within the course and scope of their duties.
- The manufacture, possession, transportation, or sale or other transfer of silencers to listed law enforcement agencies by dealers or manufacturers, as specified.

Existing California law defines a “silencer” “as any device or attachment of any kind designed, used, or intended for use in silencing, diminishing, or muffling the report of a firearm. The term ‘silencer’ also includes any combination of parts, designed or redesigned, and intended for use in assembling a silencer or fabricating a silencer and any part intended only for use in assembly or fabrication of a silencer.” (Penal Code § 17210.)

This bill deletes the prohibition on possessing silencers.

This bill allows for the use of a silencer when hunting bird, mammal, fish, reptile or amphibian, for which the individual hunting is licensed if the firearm to which the device is attached is lawfully possessed.

COMMENTS

1. Need for This Bill

According to the author:

With this bill, I ask this committee to embrace science over mythology. To abandon all the false information about suppressors – what Hollywood calls

“silencers”, and instead understand that a suppressor is nothing more than a muffler for firearms. I ask that this committee allow the sportsmen and women in California to have the option to use suppressors so they will no longer have to choose between their passion and their hearing. Eighteen other states have done so since 2011 for the health and safety of their recreational hunters and sportsmen. Currently 42 states allow suppressor ownership and 40 allow their use when hunting precisely because the most serious threat to hearing health is from recreational hunting and target shooting. Earplugs and earmuffs help but only their simultaneous use with a suppressor provides adequate protection from long term hearing damage.

As a matter of public safety, one of the reasons for the widespread national support for use of suppressors is because, unlike their depiction in movies, their use by criminals is virtually nonexistent. In fact, the notion that a criminal would have any use for a “suppressor” is illogical. They do not silence a gunshot and can still be tracked by law enforcement technology to identify and localize gunshots in cities and urban areas. A suppressor increases the size of a weapon making it far less concealable. Lastly, even with the passage of this bill, to use one illegally or during the commission of a crime still brings stiff state and federal penalties. And obtaining one, can take over a year of interaction with the ATF.

We have always stood together in protecting the health and safety of Californians. Please do not deny the rights of legitimate sportsmen and women in California to protect their hearing health and safety based on falsehoods, half-truths, and bias against a technology that has proven itself to be the hearing protection of the 21st century sportsmen .”

2. The National Firearms Act

The history of the National Firearms Act (NFA) is summarized by the Federal Bureau of Alcohol, Tobacco and Firearms:

The NFA was originally enacted in 1934. Similar to the current NFA, the original Act imposed a tax on the making and transfer of firearms defined by the Act, as well as a special (occupational) tax on persons and entities engaged in the business of importing, manufacturing, and dealing in NFA firearms. The law also required the registration of all NFA firearms with the Secretary of the Treasury. Firearms subject to the 1934 Act included shotguns and rifles having barrels less than 18 inches in length, certain firearms described as “any other weapons,” machineguns, and firearm mufflers and silencers.

While the NFA was enacted by Congress as an exercise of its authority to tax, the NFA had an underlying purpose unrelated to revenue collection. As the legislative history of the law discloses, its underlying purpose was to curtail, if not prohibit, transactions in NFA firearms. Congress found these firearms to pose a significant crime problem because of their frequent use in crime, particularly the gangland crimes of that era such as the St. Valentine’s Day Massacre. The \$200 making and transfer taxes on most NFA firearms were considered quite severe and adequate to carry out Congress’ purpose to discourage or eliminate transactions in these firearms. The \$200 tax has not changed since 1934.

As structured in 1934, the NFA imposed a duty on persons transferring NFA firearms, as well as mere possessors of unregistered firearms, to register them with the Secretary of the Treasury. If the possessor of an unregistered firearm applied to register the firearm as required by the NFA, the Treasury Department could supply information to state authorities about the registrant's possession of the firearm. State authorities could then use the information to prosecute the person whose possession violated state laws. For these reasons, the Supreme Court in 1968 held in the *Haynes* case that a person prosecuted for possessing an unregistered NFA firearm had a valid defense to the prosecution — the registration requirement imposed on the possessor of an unregistered firearm violated the possessor's privilege from self-incrimination under the Fifth Amendment of the U.S. Constitution. The *Haynes* decision made the 1934 Act virtually unenforceable.

Title II of the Gun Control Act (GCA) of 1968

Title II amended the NFA to cure the constitutional flaw pointed out in *Haynes*. First, the requirement for possessors of unregistered firearms to register was removed. Indeed, under the amended law, there is no mechanism for a possessor to register an unregistered NFA firearm already possessed by the person. Second, a provision was added to the law prohibiting the use of any information from an NFA application or registration as evidence against the person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application or registration. In 1971, the Supreme Court reexamined the NFA in the *Freed* case and found that the 1968 amendments cured the constitutional defect in the original NFA.

Title II also amended the NFA definitions of "firearm" by adding "destructive devices" and expanding the definition of "machinegun."

Firearm Owners' Protection Act

In 1986, this Act amended the NFA definition of "silencer" by adding combinations of parts for silencers and any part intended for use in the assembly or fabrication of a silencer. The Act also amended the GCA to prohibit the transfer or possession of machineguns. Exceptions were made for transfers of machineguns to, or possession of machineguns by, government agencies, and those lawfully possessed before the effective date of the prohibition, May 19, 1986.

(<https://www.atf.gov/rules-and-regulations/national-firearms-act>)

3. Federal Efforts to Amend the NFA

In January of 2017, Representative Jeff Duncan introduced H.R. 367, the Hearing Protection Act of 2017. This legislation: (1) eliminates the \$200 transfer tax on firearm silencers, and (2) treats any person who acquires or possesses a firearm silencer as meeting any registration or licensing requirements of the National Firearms Act with respect to such silencer. According to Representative Duncan the purpose of Hearing Protection Act of 2017 is safety, specifically:

This legislation is about safety – plain and simple,” Congressman Duncan said after dropping the Duncan-Carter Hearing Protection Act on Monday. “I’m very active in sport shooting and hunting, and I can’t tell you how better off the shooting sports enthusiasts would be if we had easier access to suppressors to help protect our hearing.

“I’ve been shooting since I was a young child - beginning with plinking with a .22 rifle and dove hunting with my Dad. My hearing has been damaged because of gun noise. Had I had access to a suppressor, it may have protected me, as well as millions of other Americans, from this sort of hearing loss. This is a health issue even recognized in Europe. It just doesn’t make any sense to regulate suppressors the way we do presently. I think it certainly is questionable from a constitutional standpoint. It’s striking that even Britain, which has some of the strictest gun laws in the world, has no restrictions on suppressors.”

Rep. John Carter said, “Suppressors do not make guns silent or dangerous, they are simply a form of hearing protection, both for the shooter and their hunting dogs. The Duncan-Carter Hearing Protection Act is common sense legislation that increases safety while shooting, allowing people to easily hear and react to range safety officers and fellow hunters. I am proud to be an original sponsor of this important legislation, and to work with my colleague Rep. Duncan to increase the availability of suppressors to sportsmen.”

The Duncan-Carter Hearing Protection Act will fix the flawed federal over-regulation of suppressors, making it easier for hunters and sportsmen to protect their hearing in the 42 states where private suppressor ownership is currently legal, and the 40 states where hunting with a suppressor is legal. This legislation will remove suppressors from the onerous requirements of the NFA, and instead require purchasers to pass an instant NICS check, the same background check that is used to purchase a firearm. In doing so, law-abiding citizens will remain free to purchase suppressors, while prohibited persons will continue to be barred from purchasing or possessing these accessories.

(Rep. Jeff Duncan and Rep. John Carter release the Duncan-Carter Hearing Protection Act, Jan 9, 2017, <http://jeffduncan.house.gov/press-release/rep-jeff-duncan-and-rep-john-carter-release-duncan-carter-hearing-protection-act>.)

5. Effect of Legislation

This legislation would make silencers legal in California. The Firearms Policy Coalition, who supports this legislation, makes the following arguments:

HEARING PROTECTION

Noise induced hearing loss and tinnitus are two of the most common afflictions for recreational shooters and hunters. Everyone knows that gunfire is loud, but very few people understand the repercussions that shooting can have on their hearing until it’s too late.

Suppressors reduce the noise of a gunshot by an average of 20 – 35 dB, which is roughly the same as earplugs or earmuffs. By decreasing the overall sound signature, suppressors help to preserve the hearing of recreational shooters, hunters, and hunting dogs around the world.

SAFER HUNTING

Most hunters do not wear hearing protection in the field because they want to hear their surroundings. The trouble is, exposure to even a single unsuppressed gunshot can, and often does, lead to permanent hearing damage. Suppressors allow hunters to maintain full situational awareness, while still protecting their hearing. The result is a safer hunting experience for the hunter, and for those nearby.

NOISE COMPLAINTS

As urban developments advance into rural areas, shooting ranges and hunting preserves across the country are being closed due to noise complaints. Although it can still be heard, suppressed gunfire helps mitigate noise complaints from those who live near shooting ranges and hunting land.

The Brady Campaign to Prevent Gun Violence, who is opposed to this legislation, states:

In recent years, the gun lobby and manufactures have been pushing silencers as a means to protect the hearing of gun owners. However, there are many models of earmuffs, headsets, and earplugs on the market that provide reliable hearing protection and are worn routinely by hunters and sportsmen. Silencers are not necessary for hearing protection purposes and have several negative impacts to public safety.

We live in a rural county surrounded by large parcels of private property and, on occasion, we hear loud gunshots. Two sides of our property border a ranch that is open to hunters. Our neighbors on the other sides shoot animals that damage their landscaping, including wild boars. The sound of gunshots alerts us to the possibility of stray bullets and, as caution would dictate, we take cover. Stray bullets are not theoretical to us; one of our solar panels was destroyed by gunfire. People living in rural areas need to know when gunshots are near so that they can take appropriate precautions.

Silencers, which were invented in 1908, have been substantially regulated by federal law since 1934 under the *National Firearms Act* because of their historic use by organized crime to muffle the sound of gunfire related to criminal activity. Decades ago, California went further and prohibited outright the possession of silencers for very good reasons: silencers distort and diminish the sound of gunfire, making it difficult for responding law enforcement to detect the location of the shooter. It is clear why a criminal would want to use a silencer as in addition to noise reduction, manufacturers tout that silencers can “disguise the location of the shooter by reducing muzzle flash and minimizing environmental disturbances and reduce recoil and muzzle flip allowing for more accurate and faster follow-up shots.”¹ A silencer in criminal hands puts the public at risk.

Furthermore, many local jurisdictions in California now use gunshot detection technologies, such as “ShotSpotter”, which get law enforcement officers deployed to the exact location of a shooting more quickly. A quicker response time not only increases the chance of finding the shooter, but facilitates earlier medical care and assistance to the victim and impacted community. Silencers make it more difficult for gunshot detection technologies to pick up the sound of gunfire.

Once the possession of silencers is allowed, it will become more difficult to control the importation, sale, loan, or self-manufacture of these devices in California. As we learned with large capacity magazines, the definitive way to limit their transfer and proliferation is by prohibiting possession. We have not doubt that once silencers are allowed in civilian hands, they will end up in criminal hands. For these reasons and in the interest of public safety, the California Brady Campaign must oppose SB 710.

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ⁱ Advanced Armament Corp, “Frequently Asked Questions.”