
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 2847 **Hearing Date:** July 31, 2020
Author: Chiu
Version: July 2, 2020
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Unsafe Handguns*

HISTORY

Source: Brady United Against Gun Violence

Prior Legislation: AB 2733 (Harper), 2018, failed in Asm. Public Safety
AB 1471 (Feuer), Chapter 573, Stats. 2007

Support: Alameda County District Attorney; Brady United Against Gun Violence – Oakland/Alameda County; Brady United Against Gun Violence – San Diego; Brady United Against Gun Violence – San Francisco; Cleveland School Remembers – Brady; Coalition Against Gun Violence – A Santa Barbara County Coalition; Coalition to Stop Gun Violence; Friends Committee on Legislation of California; Giffords Law Center to Prevent Gun Violence; Jewish Center for Justice; Los Angeles City Attorney; Los Angeles County Board of Supervisors; March for Our Lives California; NeverAgaininCA; St. Paul’s Cathedral – San Diego; San Francisco Police Officers Association; Santa Clara County District Attorney’s Office; The Violence Prevention Coalition of Orange County; United Nations Association of the United States of America - San Diego Chapter; Women Against Gun Violence; Youth Alive!

Opposition: California Rifle and Pistol Association; California Sportsman’s Lobby; Gun Owners of California; National Rifle Association; National Shooting Sports Foundation; Outdoor Sportsmen’s Coalition of California; Peace Officers Research Association of California; Safari Club International – California; San Bernardino County Safety Employees Benefit Association

Assembly Floor Vote: 52 - 20

PURPOSE

The purpose of this legislation is to require all semiautomatic pistols not already listed on the Department of Justice (DOJ) roster of not unsafe handguns be equipped with chamber load indicators, magazine disconnect mechanisms, and microstamping technology.

Existing law requires commencing January 1, 2010 for all semiautomatic pistols that are not already listed on the roster of not unsafe handguns, be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the

pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the DOJ certifies that the technology is available to more than one manufacturer unencumbered by any patent restrictions. (Pen. Code, § 31910, subd. (b)(7)(A).)

Existing law requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code, § 32000, subd. (a).) Specifies that this section shall not apply to any of the following:

- 1) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the DOJ to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this;
- 2) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section;
- 3) Firearms listed as curios or relics, as defined in federal law; and,
- 4) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 32000, subd. (b).)

Existing law specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

Existing law defines "unsafe handgun" as "any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified." (Pen. Code, § 31910.)

Existing law requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010, subd. (a).)

Existing law requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)

Existing law provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code § 32015, subd. (b)(1).)

Existing law provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

Existing law states that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:

- 1) The manufacturer petitions the AG for reinstatement of the handgun model;
- 2) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;
- 3) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;
- 4) The three handgun samples shall only be tested once. If the sample fails it may not be retested;
- 5) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;
- 6) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,
- 7) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subs. (a)-(g).)

Existing law provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

- 1) Finish, including, but not limited to bluing, chrome plating or engraving;
- 2) The material from which the grips are made;
- 3) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm; and,
- 4) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

Existing law requires any manufacturer seeking to have a firearm listed as being similar to an already listed firearm to provide the DOJ with the following:

- 1) The model designation of the listed firearm; and

- 2) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns;

Existing law requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

This bill requires commencing July 1, 2022 for all semiautomatic pistols that are not already listed on the DOJ roster of not unsafe handguns, be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in one or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired.

This bill requires commencing July 1, 2022 for all semiautomatic pistols that are not already listed on the DOJ roster of not unsafe handguns be equipped with a chamber load indicator and a magazine disconnect mechanism if it has a detachable magazine.

This bill provides that the DOJ shall, for each newly added semiautomatic pistol added to the roster of not unsafe handguns, remove from the roster exactly three semiautomatic pistols lacking a chamber load indicator, magazine disconnect mechanism, or microstamping technology. Each semiautomatic pistol removed from the roster shall be considered an unsafe handgun. The Attorney General (AG) shall remove semiautomatic pistols from the roster in reverse order of their date of addition to the roster.

This bill contains numerous Legislative findings and declarations.

COMMENTS

1. Need for This Bill

According to the author:

Federal law imposes no design safety standards on domestically manufactured firearms. In fact, the federal Consumer Product Safety Act exempts firearms from meeting even minimal standards. As a result, federal law had effectively created a protected market for “junk guns” that, due to poor construction or design, often jam, misfire, or malfunction.

In 1999, California acted to fill gaps in federal product safety law by enacting the Unsafe Handgun Act (UHA), which requires that all *newly developed* handgun models meet basic reliability and safety standards in order to be certified for sale or manufacture by the state Department of Justice. In order to be certified for sale, a newly developed pistol model must pass:

1. A firing test to confirm the gun can be fired multiple times without malfunctioning; and
2. A drop safety test to confirm the firearm can be dropped without discharging.

Subsequently enacted legislation requires that most semiautomatic pistol models developed after January 2007 also have:

3. A chamber load indicator to signify when the firearm is loaded; and
4. A magazine disconnect mechanism to prevent the gun from firing when a detachable magazine is removed.

In 2007, Governor Schwarzenegger signed legislation to strengthen the UHA. AB 1471 (Feuer) required all new semiautomatic pistol models to incorporate microstamping technology, which imprints a microscopic array of characters unique to that firearm on ammunition cartridge casings when the weapon is fired. This technology could enable law enforcement to match cartridges found at crime scenes directly to the gun that fired them, similar to the way law enforcement can use an automobile's license plate to identify the vehicle's make, model, VIN, and registered owner. In cities across the nation, large majorities of fatal and non-fatal shootings go unsolved by law enforcement, encouraging cycles of retaliatory violence instead.

The gun industry has not introduced any new handgun models into the California market since the 2007 laws were passed. Thus, Californians have not benefitted from microstamping technology or the other safety requirements that were also passed in 2007 to require a chamber load indicator or magazine disconnect mechanism.

While firearm manufacturers have asserted that they do not have the capacity to microstamp cartridges from two places on the interior of a firearm (as required under AB 1471), they conceded in court that they are able to microstamp from one place.

AB 2847 eases compliance for manufacturers by requiring that newly developed semiautomatic pistol models etch microstamping characters on one place on the interior of the firearm, as opposed to two. Additionally, AB 2847 furthers implementation of the new UHA requirements by directing the Attorney General to remove three previously grandfathered handgun models from the roster for each new compliant handgun model that is introduced.

Microstamping technology will significantly improve law enforcement's ability to identify shooters and gun traffickers, apprehend them before they do more harm, and hold them accountable. Incorporating other UHA design safety standards in more handguns sold in California would also help prevent accidental shootings.

2. Unsafe Handgun Law

SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

- 1) *Required Safety Device*: The Safe Handgun Law requires a revolver to have a safety device that, either automatically in the case of a double-action firing mechanism or by manual

operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.

- 2) *Firing Test*: In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.
- 3) *Drop Test*: The Safe Handgun Law provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer.

SB 489 (Scott), Chapter 500, Statutes of 2003, added to the unsafe handgun law requirements for semiautomatic pistols that became effective in 2006 and 2007. The legislation requires that for a new semiautomatic center-fire pistol firearm to be added to the roster it has to be equipped with a chamber load indicator¹ and a magazine disconnect² (if it has a detachable magazine). The legislation also requires that all semiautomatic rimfire pistols, with a detachable magazine, have a magazine disconnect. All firearms that were on the not unsafe handgun list prior to the effective dates were essentially grandfathered in. Those who supported SB 489 argued:

It is just common sense that handgun should include a chamber load indicator that makes it clear whether the weapon is loaded. Since cheap disposable cameras can clearly count down the number of pictures left, it is inexcusable that handguns do not indicate when a bullet is in the chamber. Magazine safety disconnects would also greatly reduce the number of unintentional accidental shootings by ensuring that when the magazine is removed the gun will not fire.

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added "microstamping" as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010, "provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions." As discussed above, the Department of Justice issued the certification on May 17, 2013. Like the other provisions, the "microstamping" requirement did not apply to firearms already on the roster. The author of AB 1471 provided the rationale for the additional requirement,

¹ A chamber load indicator is a device that plainly indicates that a cartridge is in the firing chamber. (Penal Code § 16380.)

² A magazine disconnect is a mechanism that prevents a semiautomatic pistol from operating when a detachable magazine is not inserted in the semiautomatic pistol. (Penal Code § 16900.)

AB 1471 will help law enforcement identify and apprehend armed gang members before they inflict more harm on others, including innocent bystanders. In instances of drive-by shootings, where the only evidence at the crime scene may be a spent cartridge case, law enforcement could quickly obtain a critical lead.

3. Attorney General Certification

AB 1471 (Feuer), Chapter 573, Statutes of 2007, required, effective January 1, 2010, semiautomatic pistols not already designated as a safe handgun, to be equipped with microscopic identifying markings which are transferred to each cartridge case when the firearm is fired in order for the firearm to be placed on the roster of not unsafe handguns. The implementation of AB 1471 was delayed until the AG certified that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.

On May 17, 2013, the DOJ certified the microstamping technology required by AB 1471 (2013-BOF-03). The DOJ stated, "The purpose of this bulletin is to inform California licensed firearms dealers, California DOJ certified laboratories, firearm manufacturers with firearms listed on the Roster of Handguns Certified for Sale in California, and all other interested persons/entities of the DOJ's certification on May 17, 2013 pursuant to Penal Code Section 31910, subd. (b)(7)(A) that the microstamping technology is available to more than one manufacturer unencumbered by any patent restrictions."

4. Removal of Firearms from the DOJ Roster of "Not Unsafe" Handguns

This bill requires that commencing July 1, 2022, semiautomatic handguns must be equipped with microstamping technology, chamber load indicators, and magazine disconnect mechanisms in order to be listed on the DOJ roster of "not unsafe" handguns that can lawfully be sold in the State. However, for each new model added to the roster, the DOJ will be required to remove from the roster three semiautomatic pistol that lacks one or more of the above features in reverse order of their addition to the roster. This would appear to be a disincentive for firearms manufacturers to add new models to the roster because three other semiautomatic pistols that they manufacture, currently considered not unsafe, would be removed.

5. Argument in Support

Brady United Against Gun Violence states:

The gun industry has acknowledged that microstamping is entirely feasible, but has maintained that it is not possible to microstamp two separate places on the interior of the firearm as is the current mandate under the Unsafe Handgun Act (UHA). Although it is entirely practicable to have two engravings, it is not necessary. One engraving on the firing pin of a firearm reliable provides law enforcement the available and necessary information concerning the gun. AB 2847 therefore eases this requirement by mandating that newly developed semiautomatic pistol models engrave microstamping characters on just one place on the interior of the firearm, the firing pin, as opposed to two. Gun manufactures can easily and affordably comply with this mandate as well as the other important UHA quality and safety standards.

Additionally, AB 2847 furthers implementation of the UHA requirements by directing the Attorney General to remove three previously grandfathered handgun models from the roster of certified handguns that may be manufactured and sold in California, for each new compliant handgun model that is introduced. This will guarantee a progressive movement towards ensuring that one day all firearms in California will be in compliance with the important and life-saving standards outlined in the UHA.

In short, the microstamping mandate in AB 2847 will significantly improve law enforcement's ability to identify shooters and gun traffickers, apprehend them before they do more harm, and hold them accountable. Also, AB 2847 will ensure that more, and eventually all, handguns sold in CA will comply with the other important UHA design safety standards on a rolling basis. These standards work to prevent unintentional shootings and will protect California consumers.

6. Argument in Opposition

The *California Sportsman's Lobby* argues:

AB 2847 would substantially reduce the number of 'not unsafe' pistols presently available to California sportsmen to buy, is opposed by the California Sportsman's Lobby.

It would do so, commencing July 1, 2022, by requiring that new pistols added to the states, 'not unsafe' handgun roster possess microstamping technology in centerfire pistols that would imprint the make, model, and serial number in one place on empty cartridge casings from ammunition discharged from the pistol; a chamber load indicator for centerfire semiautomatic pistols; and, a magazine disconnect feature that would prevent discharge of the firearm if its detachable magazine is removed for both centerfire and rimfire semiautomatic pistols.

The bill would require the removal of three models of semiautomatic pistols now on the roster of 'not unsafe' handguns if they lack one or more of the above features each time a new model is added.

The models currently on the roster are popular, not unsafe, and should continue to be available to sportsmen and other lawful individuals regardless of whether new models are added. If the new models that comply with the requirements of AB 2847 are added to the roster, the current list of pistols that sportsmen and others can buy will eventually be reduced by two-thirds, even though such models are not unsafe.

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