



Tuesday, February 27, 2018

Assembly Member Reginald Jones Sawyer Sr., Chair
Assembly Member Tom Lackey, Vice Chair
Assembly Public Safety Committee
1020 N Street (LOB), Room 111
Sacramento, California 95814

Regarding: Assembly Bill 1872 (Voepel)
Position: Opposed

Dear Assemblymembers Jones-Sawyer and Lackey:

On behalf of the members and supporters of Firearms Policy Coalition, I write you today to express our opposition to Assembly Bill 1872 (AB 1872) and respectfully request your “no” vote.

AB 1872 piles on complications to California’s already-esoteric and bizarre “Unsafe Handgun Act” regulatory scheme at Penal Code § 32000, et seq.,¹ of first prohibiting outright the importation, manufacture, offering or exposing for sale, keeping for sale, giving, lending, and sale of handguns that are not considered by the State’s Department of Justice to be “safe” based on a large number of ever-evolving and increasingly burdensome statutes, regulations, and enforcement practices, and then, based on a number of byzantine cross-references and exemptions, allows some classes of individuals to buy “unsafe” handguns all the time, others to buy “unsafe handguns” some of the time, some others to buy “unsafe handguns” some of the time, and others to receive “unsafe handguns” some of the time.²

Less than two years ago, the Legislature passed Assembly Bill 2165 (2016, Bonta), which not only added to the complexity of and confusion about California’s “Unsafe Handgun Act,” it created two very serious fundamental problems—problems that AB 1872 compounds.

¹ Originally enacted with just a handful of provisions purporting to ensure that new handguns sold to all law-abiding consumers in California could meet basic safety standards (i.e., drop-testing, etc.), the scheme now includes requirements for technology that does not exist (i.e., “microstamping”) and functions as a ban on the sale of safe, modern handguns that are protected under the Second Amendment. *See* <https://www.calgunsfoundation.org/roster> for more on the history of the California handgun Roster and how the laws now function as an unconstitutional ban and extortion scheme. A federal constitutional challenge to some of these statutes stands submitted and pending decision at the 9th Circuit Court of Appeals (*Peña, et al. v. DOJ Bureau of Firearms Chief Stephen Lindley*, 9th Circuit no. 15-15449, argued March 16, 2017).

² For just one example of how the “Unsafe Handgun Act” has evolved into the incoherent mess it is today, *see* Penal Code § 3200(b)(5), which was amended by AB 892 (2015) to create a new cross-reference contingent exception such that the “Unsafe Handgun Act” now allows the spouse or domestic partner of a law enforcement officer killed in the line of duty to purchase their spouse or domestic partner’s “unsafe” service weapon, even though it would otherwise be too “unsafe” for them to buy from a licensed firearm dealer under § 32000, as long as the sale to the surviving spouse/domestic complies with § 10334(d) of the Public Contract Code as amended by Assembly Bill 685 (2013).

First, AB 2165 created a whole slew of new, limited exemptions for a myriad of “second-tier” law enforcement officers.³ § 32000(b)(6). Secondly, AB 2165 enacted a new ban on the transfer of handguns by people who make use of those myriad new exemptions—then proceeded to dump the enforcement burden and risk on licensed California firearm dealers. § 32000(c)(1).

California firearm dealers are banned—at pain of losing their license⁴ and criminal liability⁵—from helping *people* who acquire an “unsafe” handgun under one of the many exemptions to transfer any handgun to someone that is not exempt from the entire scheme. Penal Code § 32000(c)(1).⁶ But licensed dealers have no way of identifying such people or verifying their status.

And, since the *proscription attaches to the person* who used the exemption, and *not the firearm* acquired under the exemption, the prohibition appears to survive even changes in employment, department, or status. This is a serious problem that the Legislature should work to correct posthaste—as we have suggested on numerous occasions and in numerous forums. But AB 1872 does not remedy or even acknowledge this problem; rather, it adds to it.

Turning, now, to the equity and constitutional issues, the Second Amendment to the United States Constitution protects the fundamental, individual right to keep and bear arms in common use for lawful purposes—especially handguns, the “quintessential self-defense weapon”, for use in one’s home, where the right is “most acute.” (*See generally Dist. of Columbia v. Heller*, 128 S.Ct. 2783 (2008).)

Many handguns that are overwhelmingly in common use for lawful purposes across the United States are not available for sale to law-abiding Californians (i.e., they are “off Roster”). Any handgun that is “safe” enough for a law enforcement officer to buy, possess, and carry for duty or personal use is safe enough for law-biding Californians to buy, possess, and carry for their personal self-defense.

AB 1872 stands for the proposition that the “common folk” of California, the law-abiding people who would choose a safe, modern handgun not listed in the Department of Justice’s ever-shrinking handgun Roster, have fewer fundamental rights than the people they employ.

³ Even K-12 school, community college, University of California, and California State University police officers can acquire, possess, and carry these “unsafe” handguns in schools now. § 32000(b)(6)(L),(R)-(S).

⁴ Penal Code § 26800: “A license under this chapter is subject to forfeiture for a breach of any of the prohibitions and requirements of this article, except those stated in” subdivisions (c)-(d) of Section 26890 or subdivision (b) of Section 26900—all of which are inapplicable to the instant analysis.

⁵ Penal Code § 19.4: “When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.”

⁶ § 32000(c)(1): “Notwithstanding Section 26825, a person licensed pursuant to Sections 26700 to 26915, inclusive, shall not process the sale or transfer of an unsafe handgun between a person who has obtained an unsafe handgun pursuant to an exemption specified in paragraph (6) of subdivision (b) and a person who is not exempt from the requirements of this section.”)

* * *

AB 1872 does not protect or advance the right to keep and bear arms of all law-abiding Californians. AB 1872 is not a rational, equitable, or thoughtful measure built on broad stakeholder input and consensus. And AB 1872 is a problematic and constitutionally-offensive bill that deals yet another special favor to one well-connected special interest group and puts law-abiding licensed gun dealers at risk of losing their license, losing their business, and potentially going to jail (and losing their own gun rights). We must, accordingly, stand in strong opposition to Assembly Bill 1872 and once more ask for your “no” vote.

Please feel free to contact us at policy@fpchq.org or (916) 378-5785 if you have any questions or would like discuss this measure or our suggested amendments further.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. DeLuz', with a stylized flourish at the end.

Craig DeLuz
Legislative Advocate

cc: Author
Members of the Committee; committee consultants
Assembly Republican Caucus; consultants