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CALIFORNIA FIREARM “COMPLIANCE” PRODUCTS AND DEVICES

Introduction

Gatzke Dillon & Ballance LLP has been made aware of numerous firearms products that purportedly seek to help California gun owners and gun-possessing visitors comply with California’s Assault Weapon Control Act (“AWCA”), California Penal Code §§ 30500-31115, by, for instance, altering the firearm to meet the definition of “fixed magazine” so that the firearm no longer meets the definition of an “assault weapon” under California law.

For example, there are several designs for rear take-down pins (for AR-15-style firearms) that allow the user to separate the upper receiver from the lower receiver without requiring the rear take-down pin to be removed from the upper receiver rear take-down pin locking lug; with some such installations, the upper and lower receivers may only be slightly separated (depending on the specific product and the specific receivers and lower parts involved). Importantly, these products may allow the user to remove the firearm’s “fixed” magazine once the pin is disengaged in the manner of function of the particular device, and the upper and lower receiver are separated as described above.

At issue is whether the separation of the upper and lower receiver allows the firearm to fire. Depending on the specific receivers and parts used in a given assembly, there may not be sufficient separation between the upper and lower receivers to prohibit the firearm’s hammer from making contact with the firing pin if the trigger is pulled. Thus, in addition to potentially being dangerous to the user or others, it is possible that a law enforcement officer, prosecutor, and/or jury may determine that the action of the firearm is not sufficiently disassembled to place the firearm outside of the scope of the AWCA, even if the firearm does not cycle properly. If it is determined that the action of the firearm is not disassembled before the magazine can be removed, the firearm may not meet the “fixed magazine” definition under California law, and may thus be considered an “assault weapon” subject to the terms of the AWCA including, but not limited to, penalties of forfeiture, fine, and/or jail or prison.



Below are some relevant provisions of the Assault Weapons Control Act and the recently-adopted “bullet button assault weapon” regulations (at tit. 11 Cal.Code Regs., §§5471(a)-(hh)) to help illustrate potential areas of concern.

California’s Assault Weapon Control Act (Cal. Penal Code §§ 30500-31115): Key Provisions

The key provisions of the California Assault Weapon Control Act are as follow:

- (a) Notwithstanding Section 30510, “assault weapon” also means any of the following:
 - (1) A semiautomatic, centerfire rifle that does not have a **fixed magazine** but has any one of the following:
 - (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
 - (B) A thumbhole stock.
 - (C) A folding or telescoping stock.
 - (D) A grenade launcher or flare launcher.
 - (E) A flash suppressor.
 - (F) A forward pistol grip.
 - (2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.
 - (3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.
 - (4) A semiautomatic pistol that does not have a fixed magazine but has any one of the following:
 - (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
 - (B) A second handgrip.
 - (C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer’s hand, except a slide that encloses the barrel.
 - (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.
 - (5) A semiautomatic pistol with a **fixed magazine** that has the capacity to accept more than 10 rounds.
 - (6) A semiautomatic shotgun that has both of the following:



- (A) A folding or telescoping stock.
- (B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.
- (7) A semiautomatic shotgun that has the ability to accept a detachable magazine.
- (8) Any shotgun with a revolving cylinder.
- (b) For purposes of this section, “**fixed magazine**” means an ammunition feeding device contained in, or permanently attached to, a firearm **in such a manner that the device cannot be removed without disassembly of the firearm action.**

“Bullet Button Assault Weapon” Regulations & Important Related Definitions

The California Department of Justice (DOJ) recently published “assault weapon” regulations.¹ These regulations set forth numerous relevant definitions, including some that concern “fixed magazine,” “disassembly of the firearm action,” and “semiautomatic.” The following definitions are found in the California Code of Regulations, title 11, Div. 5, Chap. 39, Art. 2, sections 5471 (a)-(rr):

- **(b) “Action”** means the working mechanism of a semiautomatic firearm, which is the combination of the receiver or frame and breech bolt together with the other parts of the mechanism by which a firearm is loaded, fired, and unloaded.”²
- **(m) “Detachable magazine”** means any ammunition feeding device that can be removed readily from the firearm without disassembly of the firearm action or use of a tool. A bullet or ammunition cartridge is considered a tool. An ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine.
- **(n) “Disassembly of the firearm action”** means the **fire control assembly** is detached from the **action** in such a way that the **action has been interrupted**

¹ While the regulations were, according to DOJ, for use only in the registration process, another proposed and pending regulation (at § 5460) would apply these regulations for all purposes, including for law enforcement and prosecutions.

² Under this definition of “action,” the language “parts of the mechanism by which a firearm is **loaded, fired, and unloaded**” *does not* require these stated operations to all occur automatically with each successive firing of the firearm, merely that the necessary parts exist **that allow** these operations to occur.



and will not function. For example, disassembling the action on a two part receiver, like that on an AR-15 style firearm, would require the rear take down pin to be removed, the upper receiver lifted upwards and away from the lower receiver using the front pivot pin as the fulcrum, before the magazine may be removed.

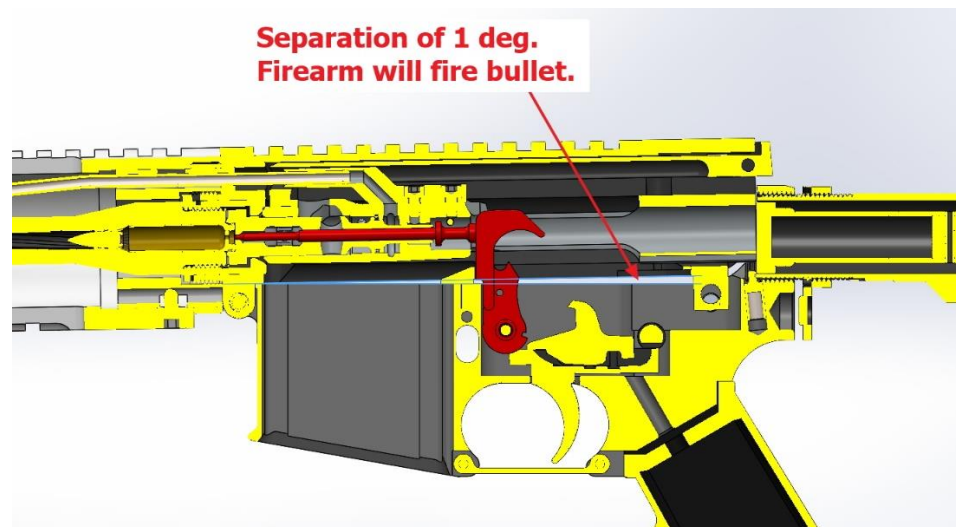
- **(p) “Fixed magazine”** means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed **without disassembly of the firearm action.**
- **(bb) “Receiver, lower”** means the lower part of a two part receiver.
- **(dd) “Receiver, upper”** means the top portion of a two part receiver.
- **(hh) “Semiautomatic”** means a firearm functionally able to fire a single cartridge, eject the empty case, and reload the chamber each time the trigger is pulled and released. Further, certain necessary mechanical parts that will allow a firearm to function in a semiautomatic nature must be present for a weapon to be deemed semiautomatic. A weapon clearly designed to be semiautomatic but lacking a firing pin, bolt carrier, gas tube, or some other crucial part of the firearm is not semiautomatic for purposes of Penal Code sections 30515, 30600, 30605(a), and 30900.
 - (1) A mechanically whole semiautomatic firearm merely lacking ammunition and a proper magazine is a semiautomatic firearm.
 - **(2) A mechanically whole semiautomatic firearm disabled by a gun lock or other firearm safety device is a semiautomatic firearm. (All necessary parts are present, once the gun lock or firearm safety device is removed, and weapon can be loaded with a magazine and proper ammunition.)**
 - (3) With regards to an AR-15 style firearm, if a complete upper receiver and a complete lower receiver are **completely detached** from one another, but still in the possession or under the custody or control of the same person, the firearm is not a semiautomatic firearm.
 - (4) A stripped AR-15 lower receiver, when sold at a California gun store, is not a semiautomatic firearm. (The action type, among other things, is undetermined.)

Practical Considerations

Acknowledging the statutes and regulations above, a firearm utilizing a rear take-down pin such as that described in the Introduction, above, may prevent sufficient separation between the upper and lower receiver to prevent the hammer (part of the fire control assembly) from being able to make contact with the firing pin (part of the action); and, thus, allow for the possibility of firing the firearm while still being able to remove the magazine. If this is possible, it likely would be determined that the firearm in question does not have a “fixed magazine;” and, therefore, that the weapon is an “assault weapon.” Unless the person(s) who own and possess the firearm are exempt from the various AWCA provisions and penalties, they may be prosecuted and the firearm may be seized and destroyed.

The fact that a firearm’s bolt carrier group (e.g., action) *may not* be able to fully reciprocate and load the next cartridge may not necessarily make the firearm a non-semiautomatic firearm. As illustrated in **11 C.C.R. § 5471(hh)(2)**, above, the firearm is likely *still a mechanically whole semiautomatic firearm*, because *all* of the necessary parts of a semiautomatic firearm are *still present and connected*. The fact that the bolt/bolt carrier group (action) is temporarily prevented from cycling fully may not remove the firearm from a semiautomatic classification.

The following illustration is provided to show that some separation of an AR-15 type upper and lower receiver may still allow the hammer to make contact with the firing pin while the magazine may still be able to be removed from the firearm without further disassembly:





Conclusion

Due to the potential legal risks associated with firearms that utilize “compliance” devices or the owners’/possessors’ reliance on them for compliance purposes, we **caution** readers and encourage to carefully review the above laws and regulations in their entirety.

We also strongly encourage people to seek and acquire specific legal advice about firearms, products, and installations before taking any action that might place them and their property in the scope of the far-reaching and legally dangerous Assault Weapon Control Act.

Sincerely,

/s/ John W. Dillon

Gatzke Dillon & Ballance LLP