

October 2020 Legislation/Litigation Update

Legislation

AB-2699 Originally was to simply add agencies to those exempt from prohibition of purchasing "unsafe handguns", meaning those that are not on the California roster. Passed by the Assembly, passed by the senate with amendments, and Assembly concurred with Senate amendments. Signed into law by Governor Newsom on September 30, 2020.
Effective January 1, 2021 or as specified.

The Senate Amendments:

- 1) Provide that that the sale of "unsafe" handguns to specified law enforcement entities and the peace officers employed by those entities are only authorized if the handgun is to be used as a service weapon.
- 2) Require the Department of Justice (DOJ) to maintain a database of "unsafe handguns" that have been sold to peace officers that are exempt from the prohibition against the purchase of these handguns.
- 3) Require the DOJ by March 1, 2021 provide a notification to the persons and entities that have purchased "unsafe handguns" regarding the prohibition against the sale or transfer of such a handgun.
- 4) Require DOJ, upon notification of the sale or transfer of an "unsafe handgun" to notify the purchaser or transferee of the prohibition against the sale or transfer of such a handgun.
- 5) Requires a peace officer to notify DOJ within 72 hours of the sale or transfer of an "unsafe handgun." This requirement shall be deemed satisfied if the transfer or sale is processed through a licensed firearms dealer.
- 6) Makes the unlawful sale or transfer of an "unsafe handgun", or failure to report to the DOJ the sale or transfer of an "unsafe handgun" subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

SB-1375, which started out to make changes to signage at inspection stations. makes illegal transfer of a semi-automatic rifle a felony instead of a misdemeanor, and make it a crime to bring a firearm into the state with the intent to evade specific transfer requirements. Amended and referred to Public Safety Committee March 26. It should have died in committee, but is continued due to temporary COVID-19 rules. The legislative session has ended for this year, but may return in the next legislative session.

AB-3058 to increase storage requirements for firearms in unattended vehicles went to the Assembly Committee on Public Safety March 5. It should have died in committee, but is continued due to temporary COVID-19 rules. The legislative session has ended for this year, but may return in the next legislative session.

AB-3071, to require lead free ammunition at shooting ranges, has been suspended and then referred to the Assembly Water, Parks, and Wildlife Committee. It should have died in committee, but is continued due to temporary COVID-19 rules. The legislative session has ended for this year, but may return in the next legislative session.

Litigation

Rupp v Becerra, challenging the California Assault Weapons ban.

Trial Court Case No.: 8:17-cv-00746-JLS-JDE

Appeal Court Case No.: 19-56004

Oral arguments were held October 8 regarding whether the summary judgment process was appropriate. The appeals panel may uphold the summary judgment, or send the case back to the trial court for further action.

Miller v Becerra, challenging the California Assault Weapons Ban

District Court Case : 3:2019cv01537

Evidentiary Hearing on the defendant's motion to dismiss will be held in Judge Benitez' courtroom on October 16.

Rhode v Becerra, challenging Ammo Background Checks, etc.

District Court Case No.: 3:18-cv-00802-BEN-JLB

Court of Appeals Case No.: 20-55437

Oral Arguments are scheduled for Monday, November 9, before a panel of the Ninth Circuit Court of Appeals. The panel may uphold or overturn the district court judge's order that the state changes in ammo purchases are unconstitutional. The court did ask both litigants to provide a brief on historical precedents.

Young v Hawaii, a challenge to the Hawaii open carry ban.

Appeal 12-17808

A three judge panel of the 9th Circuit ruled that the Hawaii ban on allowing open carry violated the Second Amendment. On September 24 the 9th Circuit Court of Appeals held an En Banc re-hearing of Young v Hawaii. The En Banc panel is hearing the case "De Novo" or as new. This means the panel ruling and that hearing should not weigh in their decision. However, all three judges from the panel have been seated in the En Banc hearing.

Nichols v Newsom, a challenge to the California open carry ban, is being held pending a ruling in Young v Becerra. That case may set a precedent for this case.

Duncan v Becerra, challenging the California ban on magazine holding more than ten rounds. The District Court and Ninth Circuit ruled that the ban on magazines holding more than ten rounds is unconstitutional.

District Court Case No.: 3:17-cv-01017-BEN-JLB

Appeal Court Case No.: 19-55376

The Ninth Circuit has denied the motion for an En Banc hearing. No further action has been taken regarding the stay, in anticipation of appeal to the Supreme Court.

Hawaii bans handgun magazines over 10 rounds. A proposal to extend the ban to rifles was defeated in the 2020 legislature. If the Duncan panel decision remains good law, the Hawaii handgun magazine ban would have to fall. Like Hawaii, the Commonwealth of the Northern Mariana Islands is part of the Ninth Circuit. The Commonwealth bans magazines over 10 rounds. That ban would be invalid under Duncan, too.

Note that the Third Circuit Court of Appeals has upheld the New Jersey "high capacity" magazine ban, while the Ninth Circuit ruled it unconstitutional. Magazine bans have also been upheld in the First, Second, Fourth, Seventh, and D.C. Circuits. The Supreme Court has a rule (Rule 10) that says if there is a split between appeals courts on an issue that the Supreme Court will consider the case. However, in recent second amendment cases the court has let splits stand. Even a well-established circuit split may just be left as is. For example: If an adult passes a fingerprint-based background check and safety training, should the person be allowed to carry a concealed handgun, for lawful self-defense? The D.C. and Seventh Circuits have answered "yes." Five other circuits have said that the right to bear arms may be denied unless the applicant shows a special need. (1st, 2d, 3d, 4th, 9th Cir.) In some states, such as Hawaii, special need is construed to be non-existent.

Respectfully submitted,

David Smith