

California Legal Handguns

Just when you thought that California's gun control laws had finally stabilized—our legislature changes the rules again! Effective January 1, 2001, it is illegal for a gun dealer to sell handguns in California that have not been approved under our new safety test requirement (with the usual confusing set of exceptions).

The bill was SB 15, signed into law December 7, 1998, and entered into our law books as California Penal Code § 12125 through 12133. The excuse was safety; this new law prohibits manufacture, sale, or importation of what the statute calls “unsafe handguns.”¹ At first glance, it might seem as though the statute was written with a misguided goal to make handguns safer. Revolvers whose firing pins rest on the primer are “unsafe handguns.” Pistols must have a “positive manually operated safety device” as defined by BATF.²

There is a “drop safety” requirement that revolvers and pistols must meet, in which three test guns supplied by the manufacturer are dropped 39.8 inches onto a concrete slab in six different orientations. All three of the test guns are loaded with a primed empty case in the chamber, but with the manual safety off. If any of the three test guns fires the primed case, that model is considered “unsafe.”³ I'm told that there is already a similar, but different industry standard for drop safety, but of course, if California had adopted that standard, this would have reduced the cost of the California-specific testing—and as you'll see shortly, the goal was not safety, but discouraging sales of handguns here.

At least one could argue that the drop safety test has some connection to preventing handgun accidents. Some handguns—especially some of the older Single Action Army

¹ Cal. Penal Code § 12125(a).

² Cal. P.C. § 12126.

copies—have been known to fire when dropped. But as we will see later, some categories of guns have been exempted from these requirements, and in a way that shows that safety isn't really the goal of this law.

In addition to the drop safety test, handguns to be sold in California must also pass a “firing requirement for handguns” test. This test requires that the manufacturer provide three test guns of the particular make, model, and caliber. The testing lab fires 600 rounds through each test gun, stopping every 50 rounds for the gun to cool, for cleaning, and tightening any loose screws. The first 20 rounds must be fired without malfunction, and the next 550 rounds must be fired with no 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.”⁴

The requirement about “crack or breakage” qualifies as a safety issue. Certainly, there have been guns sold in the United States that were so poorly made that they probably wouldn't pass this test, but such guns appear to have been killed off by the combination of the Gun Control Act of 1968 and product liability lawsuits. (Maybe the lawyers are good for something after all.) When I recently searched through lists of product liability suits brought against gun makers, I was astonished to find that very, very few such suits involve guns that were unsafe; nearly all such suits alleged that the marketing of the guns was defective.⁵ Indeed, in one such “negligent marketing” suit, the plaintiffs admitted that the gun had “no design defects” and “performed exactly as intended.”⁶

³ Cal. P.C. § 12128.

⁴ Cal. P.C. § 12127.

⁵ Windle Turley and James E. Rooks, *Firearms Litigation, Law, Science, and Practice*, (Shepard's/McGraw-Hill, 1988) and the 1993 Supplement; Timothy A. Bumann,

But what about the requirement that the gun work reliably? That's not safety. Indeed, a cynic would suggest that by the definition of the gun control advocates, a gun that never fires is "safer" than one that works perfectly. Pure and simple, this requirement was aimed at the inexpensively made "Ring of Fire" manufacturers: Jennings, Bryco, Raven Arms, and a few others that used to be based in Southern California. These are guns that are actually more reliable than their appearance would suggest, but which have one unforgivable fault in the eyes of the gun control advocates: poor people (which in California, mostly means black and Hispanic people) can afford them.

If a gun meets the legal requirements concerning a safety, passes the drop safety test, and the "firing requirement for handguns" test, then the California Department of Justice puts it on the list of guns that are legal to sell in California. They keep this list on their web site at <http://caag.state.ca.us/firearms/certlist.htm>.

As of December 17, 2000, there were 153 models on that list, including handguns made or imported by Beretta, CZ USA, Glock, Heckler & Koch, Kimber Mfg., Magnum Research, Para Ordnance, Sig Arms, Smith & Wesson, Ruger, and Walther. At the bottom of the list we are told, "Other models have passed, and will be listed when the manufacturers pay the listing fees." Other guns by the same maker that have the same mechanism and dimensions, but different finish or model name, are considered to have passed the test.⁷ I would consider that it would be very, very foolish for a gun dealer to sell a handgun in California unless they had something in writing from the manufacturer that

The Compendium of Reported United States Firearms Products Liability Cases: A Synopsis of Civil Litigation Against Manufacturers and Sellers, 2d ed., (Atlanta, Ga.: Cozen & O'Connor, 1995).

⁶ *Shipman v. Jennings Firearms, Inc.*, 791 F.2d 1532, 1533 (11th Cir 1986).

claimed that a particular model was either on the approved list, or was substantially identical to a gun on the approved list.

I mentioned earlier that certain guns were exempt from the safety testing. When you look at the exceptions, it becomes apparent that safety isn't the issue. Single action revolvers holding at least five rounds of a design that was first manufactured before 1900, with a barrel at least three inches, and an overall length of at least 7 ½ inches, are exempt from these testing requirements.⁸ So the various single action revolvers, both original and modern reproductions, are exempt—even though most everyone who knows about this matter agrees that many of these designs are less safe than any modern revolver or pistol.

Single action revolvers of a design that was first manufactured after 1900, but that meet BATF's criteria for importation under the Control Act of 1968, are also exempt.⁹ This sort of makes sense from a safety standpoint; the GCA68 requirements mean that revolvers imported in the United States today are quite safe. But why are other handguns imported under GCA68's requirements not exempt? It's not because the single action revolvers are so much safer than imported double action revolvers or pistols. It's because the market for single action revolvers isn't found among people with dark skins.

Handguns that are on BATF's "curios and relics" list are also exempt.¹⁰ Now, you might be able to make a case that collector guns probably don't need to be tested for safety or reliability. I would expect that few broomhandle Mausers are being fired or used defensively. But there are some perfectly functional handguns on the "curios and relics"

⁷ Cal. P.C. § 12131.5.

⁸ Cal. P.C. § 12133.

⁹ Cal. P.C. § 12133(c).

¹⁰ Cal. P.C. § 12125(b)(3).

list that probably *are* being fired on a regular basis. Why are they exempt? Because most of these guns are being bought by white suburban gun collectors—not people with dark skins.

Private party sales of handguns are exempted from this requirement.¹¹ If you have a handgun you bought five years ago that you want to sell to someone else, that's still legal, and it doesn't matter if that model is on the California Department of Justice approved list. Remember that private party sales of handguns in California must be processed (with background check and waiting period) through a gun dealer or a police department (in some of the more rural counties). So the gun dealer who does the paperwork for a private party sale can transfer a gun that didn't make the list from one private party to another, but he can't sell that same gun if it is already in his inventory!

Finally, the least sensible exemption from the testing requirement: law enforcement. Law enforcement agencies are allowed to purchase and even issue handguns that didn't pass the safety test.¹² Huh? These handguns are so unsafe and unreliable that ordinary citizens may not buy them from gun dealers—but police departments are specifically allowed to buy and issue them! The first time that a police officer engages in an otherwise lawful defensive shooting with a gun declared by the California legislature to be “unsafe,” the lawyers are going to be salivating—and perhaps that's the reason that this provision is in there.

At this point, I was going to include a list of the models on the approved list as of December 17, 2000, but if I make any mistakes in transcribing that list, someone might end

¹¹ Cal. P.C. § 12132.

¹² Cal. P.C. § 12125(b)(4).

up in serious trouble. I would recommend that if you are one of the small number of gun dealers who does business in California, obtain a current copy of the list from the California Department of Justice at <http://caag.state.ca.us/firearms/certlist.htm>.

Clayton E. Cramer is a software engineer with a Northern California telecommunications equipment manufacturer. Praeger Press published his most recent book, *Concealed Weapon Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform*, in 1999. His web page is <http://www.ggnra.org/cramer>.