

## **California's New Gun Laws:**

### **How to Stay Out of Jail & Annoy the Gun Prohibitionists**

For several years now, California gun owners have been living in fear of what was going to happen when the Democrats regained control of the governorship. While Republican Governor Pete Wilson was never really a friend of gun owners, when we spoke loudly enough, he listened, and often vetoed the more extreme gun prohibition bills passed by our Democrat-controlled legislature. Sure enough, once Democrat Gray Davis became our new governor, the extremists in the legislature started passing gun control bills so quickly that even Governor Davis, after signing several of the more abusive bills, finally told the legislature to give it a rest; he wanted law enforcement to have time to catch up with all the new laws.

Manufacturers, wholesalers, retailers, and consumers who do business or live here in California are also having to catch up with the new laws, which are a bit confusing. My goal is to help you understand these new laws so that you don't unintentionally break them and end up in prison.

One of the bills that Governor Davis signed into law was SB 15. When it was introduced, it was an extreme measure that banned nearly all new sales of small handguns, and with a complicated and unusual testing procedure for the few classes of handguns that would still be legal. Apparently the gun control advocates in the legislature figured out that a ban on most handguns would put the Republicans in control at the next election, so SB 15 was amended to make it far less comprehensive. Most importantly, the effective date of the bill was changed to January 1, 2001—you can worry about the details of SB 15 this time *next* year.

The more immediate problem is SB 23, signed by Governor Davis on July 19, 1999. This is a very large bill (36 pages long), with a number of complex provisions that will have some odd and unintended consequences. Don't think that because the law is about "assault weapons" that it won't affect antiques or "ordinary" guns. Because of its poorly thought out details, quite a number of gun owners who look down their nose at "assault weapons" are at risk of committing misdemeanors or felonies.

SB 23 makes it a misdemeanor, punishable by up to one year in jail or prison, to manufacture, import into California, keep for sale, offer for sale, expose for sale, give, or lend any "high-capacity magazine."<sup>1</sup> (You are still allowed to possess and *think* about high-capacity magazines.) There are exemptions for armored car companies, law enforcement agencies (of course), and gunsmiths engaged in repair of lawfully owned high-capacity magazines. Californians who leave California with high-capacity magazines, then move back in can do so without breaking the law<sup>2</sup>—though I can't imagine that many California gun owners who can move out would voluntarily return here.

This means that you can't lawfully sell any "ammunition feeding device with the capacity to accept more than 10 rounds...." That includes not only detachable magazines, but also *fixed* magazines like the 20 rounder for the SKS, and stripper clips that hold more than 10 rounds. It does *not* include what the law calls "any .22 caliber tube ammunition feeding device."<sup>3</sup> It would appear that tubular magazine .22 rifles are still lawful to sell.

Just like the loophole in the federal ban on high-capacity magazine manufacturing, there is nothing in SB 23 that prohibits the sale of *parts* for high-capacity magazines—even

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<sup>1</sup> Cal. Penal Code § 12020(a)(2).

<sup>2</sup> Cal. Penal Code § 12020(b).

all the parts. While it is clearly illegal to put the parts *together* under SB 23, there seems to be nothing illegal about selling springs, followers, base plates, and the empty magazine tube!

By the way, if someone comes to your table looking to buy high-capacity magazine parts—tell them the following outrageous story about the hypocrite who doesn't want them to buy complete magazines. The author of SB 23, State Senator Don Perata, has something quite rare indeed—a California concealed weapon permit. Such permits in California list all the guns that the bearer is authorized to carry. Perata's permit has three handguns on it—all of them 15 round 9mm pistols. (When asked to defend why he is trying to disarm the rest of us—and yet he has a permit to *carry* a gun—his response was that he needs a gun to defend himself from the gun nuts.)

The other part of SB 23 of interest to dealers and buyers is the definition of “assault weapon.” Back in 1989, when California passed the Roberti-Roos Assault Weapons Control Act, one of the big problems confronting the state legislature was how to define an “assault weapon.” Many gun rights activists warned the legislators at the time that they needed to define “assault weapons” based on their function, not by brand name. Why? Because a brand name law would be easily evaded; such a law was a waste of everyone's time. If the legislators seriously believed that semiautomatic weapons were a crime problem (which they were not), then only a ban based on function would do anything.

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<sup>3</sup> Cal. Penal Code § 12020(c) (25).

Our legislators didn't want to pass a functional ban, because doing so would affect millions of California gun owners who support gun control (at least, if it doesn't affect *their* gun) and would resent the absurd registration, transfer, and use limitations. Since the punishment for manufacture, importation, distribution, keeping for sale, offering or exposing for sale, or transfer of an "assault weapon" is four to eight years in prison,<sup>4</sup> you can see how a broad ban would make a *lot* of people angry.

Our warnings about what a waste of time it was banning guns by brand name and model were completely correct, so State Senator Don Perata vowed to ban all of the "copycat" assault weapons by adopting a functional definition *in addition* to the old list of named guns. Perata seems to have had second thoughts somewhere along the way about how many guns he wanted to ban, and the bill that became law is both confusing and, at least for most *rifles*, easy to work around.

The definition of "assault weapon" is different for rifles, handguns, and shotguns. Just to make it more confusing, within each category, there are different definitions of what makes something an "assault weapon." A rifle is an "assault weapon" under the new law if it is a semiautomatic, centerfire rifle that can accept detachable magazines and has one or more of the following features: a "pistol grip that protrudes conspicuously beneath the action of the weapon"; a thumbhole stock; a folding or telescoping stock; a grenade launcher or flare launcher; a flash suppressor; or a forward pistol grip.<sup>5</sup>

But the law doesn't say, "if it was originally made with those features." So all that is required to avoid having to register a rifle with one or more of those features—and

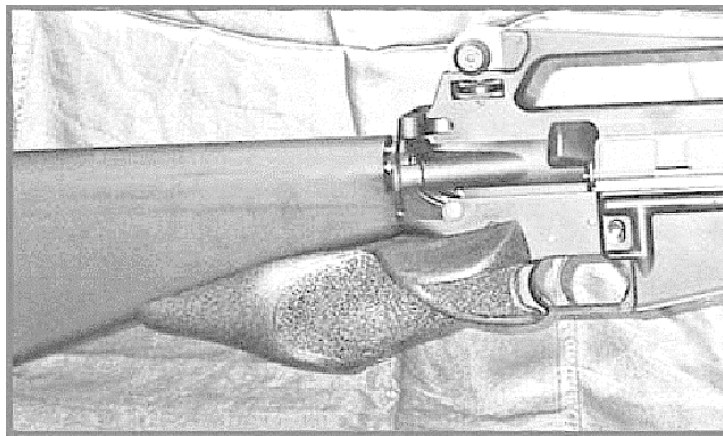
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<sup>4</sup> Cal. Penal Code § 12280(a)(1).

<sup>5</sup> Cal. Penal Code § 12276.1(a)(1).

keeping it lawful for sale to others—is to remove the features. For many of the AR-15 pattern rifles, especially Colt Sporters, which don't have a flash suppressor, the only feature that is a problem is the pistol grip. You could just hacksaw off the pistol grip, but that's not very attractive.

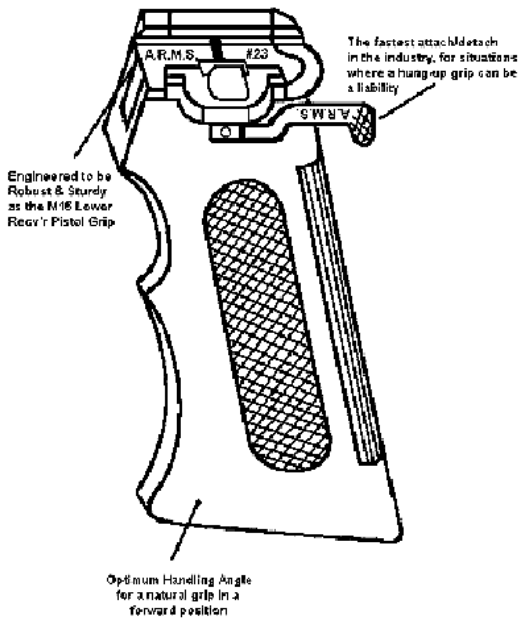
At least two companies are selling pistol grip replacements to bring at least some rifles into compliance. One company, Gun Compliant Stocks (on the web at <http://GunCompliantStocks.com>), sells an English-style stock add-on that replaces the pistol grip on many of the affected rifles so that it no longer protrude “conspicuously beneath the action.” For those of you who don't have web access, you can mail them at 1352-A East Edinger Avenue, Santa Ana, CA 92705. Phone: (714) 542-0818; FAX: (714) 542-0851.



#### Gun Compliant Stocks.com's Solution to SB23

Atlantic Research Marketing Systems, Inc., also offers a product that gets around the pistol grip problem of SB 23 (at least for AR-15 pattern rifles)—though they seem to be either unaware of why Californians might need it, or are being unbelievably coy about it. Described as a “Quick Detach Throw Lever Pistol Grip,” it is a standard pistol grip that can be attached and detached rapidly. Unlike the solution from Gun Compliant Stocks,

this will only work if you install this before January 1, 2000, and never reattach the pistol grip in the presence of police officers. (If you take this approach, store your rifle with the pistol grip detached. A fire or burglary might well bring your rifle to the attention of the authorities—and you certainly want your gun in a completely lawful state.)



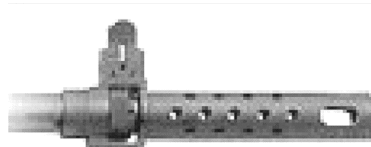
### The ARMS Solution to SB 23

On the plus side, this gadget presents an opportunity to infuriate the gun control advocates even more seriously than the Gun Compliant Stocks product, because it can be restored to the “assault weapon” form in a second or two, then made lawful just as quickly. (I keep imagining a TV ad ridiculing SB 23 where a gang member brags that he can commit 30 felonies a minute—and we show him attaching and detaching the evil pistol grip as fast as his fingers can work the lever.) Atlantic Research Marketing Systems Quick Detach Throw Lever Pistol Grip can be found at <http://www.armsmounts.com/new.html>. ARMS is at 230 West Center Street, West Bridgewater, MA 02379. Phone: (508) 584-7816; FAX: (508) 588-8045. *Since this*

*article was published in Shotgun News, I have been informed that this particular item is intended for installation on something called a “Knight’s Rail” as a forward pistol grip – not as a replacement for the standard pistol grip.*

The flash suppressor may be a problem for some rifles—but look carefully at the manufacturer’s literature before you assume that your rifle has a flash suppressor. When I asked Armalite (as Eagle Arms is now named) about the EA-15, they reminded me that they have *never* called that piece of metal at the end of the barrel a “flash suppressor” but rather a “muzzle brake.” That’s their story, and they’re sticking to it.

The M1A/M14 pattern rifles are another matter. That is most emphatically a “flash suppressor” hanging off the end of the barrel, so Springfield Armory now sells a kit to replace the flash suppressor on your M1A with a muzzle brake. (The price went up *after* I ordered it, and since I haven’t received it yet, I’m not going to tell you the price and be wrong again.) The M1A/M14 rifles don’t have any of the other banned features, so this is a painless fix. You can order it at <http://www.springfield-armory.com> or from Springfield Armory, 420 W. Main Street, Geneseo, IL 61254. Phone: (309) 944-5631; FAX: (309) 944-3676.



#### Springfield Armory’s Solution to SB 23

There are two other categories of rifles that might be a problem under the new law. “A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to

accept more than 10 rounds” is an “assault weapon” under the law.<sup>6</sup> An SKS with the optional 20 round fixed magazine wouldn't be legal—so restore the standard 10 round fixed magazine.

There are also a few semiauto, centerfire tube-fed carbines out there. Are any of them greater than 10 rounds capacity? Look carefully at the rifles you are bringing into California, and remember, that if it holds 10 rounds in .357 Magnum, it *might* hold 11 rounds in .38 Special. Ditto for 9mm carbines—.380 ACP cartridge is a bit shorter. The .380 ACP cartridge doesn't have enough recoil to operate the mechanism correctly, and it's probably not safe to do so, but an overzealous prosecutor might decide to take you to court anyway.

Semiautomatic centerfire rifles less than 30 inches long are also “assault weapons” under the new law. These rifles don't have to be detachable magazine, nor do they need any of the “features” listed above to be an “assault weapon.”<sup>7</sup> Because this is four inches longer than the federal minimum length for a long gun, get out your measuring tape and be sure before you buy or sell a very short semiautomatic carbine in California.

Detachable magazine, semiautomatic pistols with one or more of the following features are “assault weapons”: a “threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer”; a second handgrip; a “shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon

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<sup>6</sup> Cal. Penal Code § 12276.1(a)(2).

<sup>7</sup> Cal. Penal Code § 12276.1(a)(3).



without burning his or her hand, except a slide that encloses the barrel”; a detachable magazine “at some location outside of the pistol grip.”<sup>8</sup>

This definition of “assault weapon” was pretty clearly written to ban the DC9 and other pistols that look like submachine guns. But it also bans some guns that aren’t in that category. I would worry about pistols with threaded barrels intended for use with a muzzle brake—if there is a silencer or flash suppressor anywhere that can fit those threads, you may unintentionally commit a felony if you bring it here and sell it. Some of the Olympic target pistols are also “assault weapons” because the detachable magazine is “outside of the pistol grip.” Perhaps it’s just paranoia, but that definition of “shroud” seems like it has some room for misinterpretation.

Now we are getting to the real oddities. Another category of “assault weapon” under the new law is any “semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.”<sup>9</sup> It looks like the old broomhandle Mauser and a few other antiques of about the same age *might* be “assault weapons” under California law. (I say *might* because if they were made before January 1, 1899, they are “antique firearms” and thus exempt from SB 23.) Make sure that you tell your friends who collect old guns about this one—they probably don’t think that they have anything to worry about.

Finally, shotguns. Semiautomatic shotguns are “assault weapons” if they have a folding or telescoping stock, *and* a pistol grip “that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.”<sup>10</sup> (I know what they mean here—the shotgun has a pistol grip, *or* a thumbhole stock, *or* a vertical handgrip—but as

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<sup>8</sup> Cal. Penal Code § 12276.1(a)(4).

<sup>9</sup> Cal. Penal Code § 12276.1(a)(5).

with so many other parts of this law, it was carelessly written, and is easy to misinterpret.) Semiautomatic shotguns that accept detachable magazines are also “assault weapons.”<sup>11</sup> Shotguns of *any* action type that have a revolving cylinder are also “assault weapons.”<sup>12</sup>

This new law is similar to the Columbus, Ohio assault weapon ordinance struck down by the U.S. 6<sup>th</sup> Circuit Court of Appeals in 1998 because it was unconstitutionally vague. That court found that a person of ordinary intelligence could not be expected to know if they were breaking the city's ban or not<sup>13</sup>—and after this little walk through California's somewhat similar law, I think you can see why federal judges could come to that opinion. Let's hope that judges on the 9<sup>th</sup> Circuit Court of Appeals (the one that covers California) have as much sense.

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<sup>10</sup> Cal. Penal Code § 12276.1(a)(6).

<sup>11</sup> Cal. Penal Code § 12276.1(a)(7).

<sup>12</sup> Cal. Penal Code § 12276.1(a)(8).

<sup>13</sup> *Peoples Rights Organization v. Columbus*, 1998 FED App. 0210P (6th Cir.)