



Senate Bill 1327

Firearms: A Private Right of Action

As Introduced on February 18, 2022

SUMMARY

Despite robust state gun laws, gun violence in cities across California is on the rise. SB 1327 strengthens California gun laws by empowering individuals to bring civil actions against those who manufacture, distribute, transport, import into California, or sell dangerous and illegal assault weapons and ghost guns.

BACKGROUND

California law makes it a felony to manufacture, distribute, transport, or import into the state any assault weapon or any .50 BMG rifle, with limited exceptions. Despite the countless deaths prevented by the assault weapons ban, a federal judge recently found that California's assault weapons restrictions violate the Second Amendment, and notably compared the AR-15 assault rifle to a 'Swiss army knife.' This comes at a time when violent, gun-related crime has skyrocketed across the state.

In 2020, California accounted for 65% of all ghost guns seized by the Bureau of Alcohol, Tobacco and Firearms. As of October 2021, in Los Angeles alone, ghost guns were used in 24 murders, eight attempted murders, 60 assaults with deadly weapons, and 20 armed robberies. While a law regulating the sale of firearm parts sometimes used to assemble ghost guns is set to go into effect on July 1, 2022, bolder action is necessary to end the proliferation of these weapons.

ISSUE

Private rights of action are private enforcement schemes that give citizens the right to sue to enforce a law normally enforced by a government entity. For example, in California, the Unruh Civil Rights Act allows aggrieved persons to pursue a private right of action for damages for public accommodation violations of the Americans with Disabilities Act.

In September of 2021, the Texas State Legislature debased this private enforcement scheme and enacted an egregious abortion restriction law (SB 8), which allows almost anyone to sue abortion providers and others who "aid and abet" a person obtaining abortion care. By enacting its abortion ban, Texas is knowingly infringing upon a well-established constitutional right. However, while the Supreme Court recognizes an individual constitutional right to bear arms, it certainly does not recognize a constitutional right to own, manufacture, or sell an illegal assault weapon or ghost gun.

SB 1327 (HERTZBERG)

SB 1327 creates a private enforcement scheme, much like Texas' SB 8, that allows almost anyone to bring a lawsuit against those who manufacture, distribute, transport, import, or sell assault weapons, .50 BMG rifles, ghost guns, or ghost gun kits in California. A plaintiff in such an action may obtain injunctive relief to stop the spread of these weapons and recover damages of at least \$10,000 for each weapon involved, as well as attorney's fees. SB 1327 does not hold a defendant liable in repeated civil actions for violations involving the same weapon if they previously paid the full amount of statutory damages in a prior action.

SB 1327 does not impede a prosecutor's ability to enforce existing gun laws. Rather, it ensures the continued and consistent enforcement of California's gun laws by utilizing a legal mechanism recently sanctioned by the United States Supreme Court. Crucially, if either the public or private enforcement scheme is ultimately struck down by the courts, the other would continue to operate.