

Be Safe. Shoot Straight. Fight Back!



April 13th, 2022

Honorable Senator Steven Bradford
1020 N Street, Room 545
Sacramento, CA 95814

RE: SB 1327: Hertzberg. Firearms: private rights of action

Position: OPPOSED

Dear Senator Bradford,

The California Rifle & Pistol Association Incorporated (CRPA), founded in 1875, is a nonprofit membership and donor supported organization with members and supporters throughout California. CRPA works tirelessly to defend the civil and constitutional rights of individuals to choose to responsibly own and use firearms and endeavors to preserve their ability to protect their families, hunt, and enjoy competitive shooting events.

CRPA is in strong opposition to Senate Bill 1327 (SB 1327). If enacted SB 1327 will create a private right of action for any person against any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any firearm lacking a serial number required by law, assault weapon, .50 BMG rifle, or firearm precursor part, subject to certain exceptions, as specified. The bill would make these provisions inoperative upon invalidation of a specified law in Texas and would repeal its provisions on January 1 of the following year.

SB 1327 is so broad literally “any person” could bring civil action against the firearm industry. It is an attack on the lawful commerce of firearms with an intent to limit the availability of firearms. This is another misguided bill that seeks to quash and discriminate against the rights of those engaged in lawful commerce to restrict law abiding citizen’s access to firearms instead of holding accountable those that misuse firearms. Firearms are inherently safe; they are an inanimate tool. It is the operator that can sometimes be unsafe either by accident or malicious criminal intent. We must instead focus our time and resources on those who choose to use firearms in the commission of crimes!

Federal law prevents firearm manufacturers from being sued! The Protection of Lawful Commerce Act (PLCAA) protects manufacturers and dealers from being sued when a firearm is used in a crime. The act was passed by the U.S. Senate on July 29, 2005, by a vote of 65–31. It was signed into law on October 26, 2005, by President George W. Bush and became Public Law 109–92. The law prohibits victims of a person misusing firearm products from seeking damages or injunctive or other relief. PLCAA determined that businesses in the United States that are legally engaging in commerce cannot, and should not, be liable for the criminal actions of others.

271 E. Imperial Highway, Suite 620, Fullerton, CA 92835

(714) 992-2772 • (800) 305-2772

www.CRPA.org

Be Safe. Shoot Straight. Fight Back!



"The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States," PLCAA states.

As of October 2020, seven lawsuits have challenged the constitutionality of the law under the 5th and 10th Amendments, and resulted in both state and federal Appellate court decisions; all of these have found the PLCAA constitutional, except for the most recent, *Gustafson v. Springfield Armory*.

In October 2016, a Connecticut Superior Court judge dismissed a lawsuit filed by the families of some victims of the 2012 Sandy Hook Elementary School shooting against the manufacturer (Remington), the wholesale distributor, and the retailer of the semi-automatic rifle used in the shooting. Judge Barbara Bellis ruled that the suit "falls squarely within the broad immunity" provided to gun manufacturers and dealers by the Protection of Lawful Commerce in Arms Act.

In March 2019, the Connecticut Supreme Court reversed the lower court's ruling, allowing plaintiffs to continue their suit against Remington. The Supreme Court declined to intervene in ongoing litigation that had not been decided.

In 2020's *Gustafson v. Springfield Armory*, a three-judge panel of the Superior Court of Pennsylvania reversed a lower court in holding the PLCAA an unconstitutional violation of the Tenth Amendment and the Commerce Clause, the first time a court had so held. Although the lawsuit will be allowed to proceed, it won't move forward in its full, initial state, as the Connecticut Supreme Court upheld the trial court's dismissal of most of the plaintiff's claim. What does remain of the original lawsuit is the plaintiffs' allegation that Remington committed wrongful marketing, in violation of the Connecticut Unfair Trade Practices Act (CUTPA). The court held that PLCAA does not shield the gun company against this action.

SB 1327 clearly is in direct conflict with federal law that has been tried and tested! If passed it will result in distracted law enforcement and wasted tax dollars. It will be challenged, and it will be repealed. Firearms are tools, you cannot hold liable manufacturers liable for the actions of those who use them in unsafe or criminal behavior. What's next, suing Ford and General Motors when an individual gets behind the wheel intoxicated and takes human life?

Additionally, the connection of this bill to legislative efforts in Texas makes absolutely no sense! The action in Texas is in direct conflict with the US Supreme Court. In the recent decision Chief Justice John Roberts noted; "The clear purpose and actual effect of S. B. 8 (Texas abortion law) has been to nullify this Court's rulings. ... Indeed, "[i]f the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired

Be Safe. Shoot Straight. Fight Back!



under those judgments, the constitution itself becomes a solemn mockery.” United States v. Peters, 5 Cranch 115, 136 (1809). The nature of the federal right infringed does not matter; it is the role of the Supreme Court in our constitutional system that is at stake.”

The Second Amendment is, and forever will be, a Constitutional right. Etched in stone into every Americans' list of unalienable rights is the controversial, but incredible, right to "keep and bear arms." The Supreme Court has affirmed this time and time again. Whereas abortion is not a Constitutional right.

The safety of Californians is at the very foundation of our organization. It has been our consistent goal to work toward common sense solutions regarding the issue of crime and firearm ownership. This can be done, however, without sacrificing our constitutional rights and the ability of the law-abiding to protect their families, hunt, and enjoy competitive shooting events. Certainly, going after those who manufacture lawful products is not the answer! For the foregoing reasons the California Rifle & Pistol Association Inc. stands in strong opposition to SB 1327 and strongly urges you to vote no on this misguided legislation.

Respectfully Submitted,

A rectangular area containing a handwritten signature in black ink that reads "Roy M. Griffith Jr." followed by a small flourish.

Roy M. Griffith Jr.
Legislative Director
California Rifle and Pistol Association, Inc.
rgriffith@crpa.org