



STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER  
ATTORNEY GENERAL

September 1, 2006

The Honorable Arnold Schwarzenegger  
Governor of California  
State Capitol Building  
Sacramento, CA 95814

Re: Request for Signature on Assembly Bill 2728 (Klehs), An Attorney General Sponsored Bill

  
Dear Governor Schwarzenegger:

I write to request your signature on AB 2728, a measure that will clean up California's assault weapons statutes. Specifically, this measure will remove the obsolete "add-on" procedure, which allows the Attorney General to deem certain weapons "assault weapons." This bill will also make the possession of an assault weapon in violation of the Penal Code a nuisance, allowing for its destruction. This measure is sponsored by the Attorney General's Office and has no opposition.

Existing law prohibits the manufacture, distribution, transportation, importation, sale, and possession of unregistered assault weapons (with limited exceptions). Currently, assault weapons are classified by their make and model (Pen. Code, § 12276)<sup>1</sup> and by their characteristics (§ 12276.1). The Attorney General also has the power to deem specific firearms to be assault weapons through judicial and administrative add-on procedures. (§ 12276.5.) In *Harrott v. County of Kings* (2001) 25 Cal.4th 1138, the Supreme Court determined that in order to satisfy due process, the Attorney General must list a "series" weapon, i.e., a firearm with similar characteristics to a named model specifically listed under section 12276, before it can be identified as an assault weapon. Consequently, firearms that are *identical* to named assault weapons except for their markings cannot be considered assault weapons *unless and until* the Attorney General lists them pursuant to section 12276.5<sup>2</sup> (*Harrott*, 25 Cal.4th at pp. 1143-1144), or they are assembled to have the characteristics of assault weapons specified in Penal Code section 12276.1.

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> The named "series" assault weapons are listed in the Attorney General's Assault Weapons Identification Guide. (<http://ag.ca.gov/firearms/awguide/index.html>.)



Several months ago, the Attorney General received an inquiry as to whether a person may possess a "lower receiver" in California so long as it is not a "named" receiver and so long as it does not possess the prohibited characteristics under section 12276.1. Although such a receiver is nearly identical to a Colt AR-15 receiver except for its markings, the Attorney General's Office determined that such a "lower receiver" is legal to possess in California. These "clone" receivers are legal to possess because they are not "series weapons" under section 12276 (since the Attorney General has not listed them pursuant to section 12276.5), and because they do not contain any of the characteristics that would make them assault weapons, e.g., a pistol grip or flash suppressor. Although these receivers can be made into lawful centerfire rifles, they are primarily designed so that they can be made into Colt AR-15 clones, which are "characteristics" weapons prohibited by section 12276.1.<sup>3</sup> Kits are readily purchased and instructions are available on the Internet so that anyone can transform their legal-to-own receiver into an illegal assault weapon.

Due to the growing popularity of lower receivers, the Attorney General's Office has determined that updating the assault weapons list with new makes and models will serve no purpose other than to completely undermine California law by allowing the proliferation of registered assault weapons. When the Attorney General's Office lists a new assault weapon, it is required to open up a registration period. (§ 12285.) Consequently, any person who has imported a legal receiver could then register their receiver as an assault weapon.<sup>3</sup> This would then theoretically allow the registrant to add any and all of the features prohibited under section 12276.1, and would allow the person to possess a fully functioning assault weapon. Unfortunately, as soon as a new list is promulgated, all the current makes/models of lower receivers will immediately receive new "markings" and monikers and the whole process will repeat itself. Recently, because of the expectation that the Attorney General will list new receivers, thereby opening up a registration period for new weapons, it has been estimated that more than 30,000 receivers have been imported into California. In addition, notwithstanding the fact that our office has posted a bulletin stating that we will not list new assault weapons, there is still an expectation that we will list the weapons someday. In order to end the speculation as to whether the Attorney General's Office will or will not list, we believe the best course of action is to remove the provision of law that authorizes the Attorney General to add additional weapons.

Finally, current law does not provide for the disposal of unlawfully possessed assault weapons by law enforcement. This measure includes a provision that will allow such disposal as well as provide civil penalties for persons who possess illegal assault weapons.

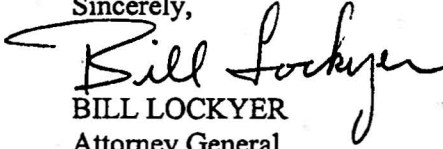
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<sup>3</sup>These are not "series" weapons under section 12276, subdivisions (e) and (f), because of the *Harrott* decision.

<sup>3</sup>It should be noted that there is some doubt as to whether the Attorney General's Office has the statutory authority to list a bare receiver as an assault weapon since it lacks the characteristics of an assault weapon, including its ability to fire

The Honorable Arnold Schwarzenegger  
Page 3

I respectfully request your signature on this important public safety measure.

Sincerely,  
  
BILL LOCKYER  
Attorney General

cc: The Honorable Johan Klehs