

NATIONAL RIFLE ASSOCIATION OF AMERICA

INSTITUTE FOR LEGISLATIVE ACTION

11250 WAPLES MILL ROAD

FAIRFAX, VIRGINIA 22030



NRA

September 24, 2013

The Honorable Edmund G. Brown
Governor of California
State Capitol Building, Suite 1173
Sacramento, California 95814

Re: Senate Bill 299 (DeSaulnier) - Firearms: Lost or Stolen Reports
Position: OPPOSED - Veto Requested

Dear Governor Brown:

On behalf of the National Rifle Association ("NRA") and its hundreds of thousands of members in California, we oppose Senate Bill 299 ("SB 299") and respectfully request that you **veto this bill**.

SB 299 would require law-abiding gun owners who are victims of theft to report the loss within seven days of when the owner knew or "should have known" it was lost or stolen.

Tragically, rather than deter fraudulent gun sales, this bill would turn victims of gun theft into criminals, and make people whose guns have been lost or stolen wisely hesitant to assist police for fear of prosecution.

Gun control advocacy groups, having learned from costly professionals how to spin their anti-gun-owner proposals as benign, disingenuously claim this law will prevent unlawful sales of firearms by purchasers who buy a gun legally, intending to resell it illegally on the black market. These "straw" purchasers often falsely claim that a crime gun traced back to them was stolen or lost. Gun owners typically report stolen firearms anyway. This law will only further victimize theft victims and impede criminal prosecutions.

Ironically, the proposed law cannot be used against the real criminals. No law can compel lawbreakers to report themselves. So a straw purchaser who legally buys a gun cannot be compelled to report that he resold it illegally. And since it wasn't actually lost or stolen, he hasn't violated this law if enacted. Similarly, if a felon prohibited from possessing a gun illegally possesses one anyway, and it is lost or stolen, he can be prosecuted for having the gun in the first place, but *cannot* be prosecuted for failing to incriminate himself by reporting the loss.

Enforcement of these laws place prosecutors in a precarious legal and ethical position. Consider if a straw purchaser's gun is recovered at a crime scene and traced back to him. If he lies to police claiming his gun was "stolen" when he really sold it on the black market, will they nonetheless prosecute him for something he did not do (fail to report the "stolen" gun – which wasn't actually stolen) but to which he "confessed?" Ethics and legality aside, securing a misdemeanor conviction for failing to report a theft (that never occurred) likely prohibits prosecuting the straw purchaser for the more serious felony black market sale or for making a false statement to police.

Perhaps worse if this legislation were enacted into law, gun owners who truly are burglary victims should now refuse to speak with police if their stolen gun is recovered at a crime scene. If the gun owner failed to report the loss at all, or in enough time, she faces possible criminal prosecution if she cooperates with police investigating the recovered gun. She should remain silent, get a lawyer, and seek immunity first. Legal representation may also be appropriate when a gun is first discovered missing. The owner can be prosecuted if the theft is not reported within seven days of when the owner "should have known" the gun was missing. Proponents believe "responsible" gun owners "should know" a gun is gone instantaneously. That's just not reality. And the fear of prosecution will encourage those who miss the reporting window not to report the loss at all.

Effectively, this proposed legislation places legitimate gun owners in jeopardy of prosecution for being a victim of crime. In light of these liabilities, gun rights groups and the criminal defense bar now advise gun owners – who would ordinarily be happy to assist police with their investigation – that they need a lawyer if they are contacted by police.

Past experiences at the local level also speaks to the failure of this policy. In 2006, the Sacramento Police Department discovered these types of ordinances are unused in the cities that have them. Police and district attorneys in Oakland, San Francisco, Berkeley, and Alameda were completely unaware such ordinances existed, and reported that no investigations, arrests or convictions related to the ordinances had taken place! An experienced inspector in the Weapons Unit of the San Francisco Police Department, who reads 3,000 reports every month, stated that he had not handled nor had he heard of any cases in which the ordinance was invoked. An Assistant District Attorney for the County of San Francisco stated, "I do not believe it will expand my ability to prosecute crime ..."

Even Sacramento Councilwoman Lauren Hammond, while acknowledging that Sacramento is at the forefront of gun violence prevention, conceded that "...on top of an ordinance that sounds really good, it hasn't done anything. Although I do support the concept, we've had an opportunity to see what it's done in other jurisdictions and it hasn't done a darned thing ... why should we ask the City Attorney to bother to enact a law that no one uses and has had no effect in the jurisdictions that have it?" Why indeed?

It is for these reasons that similar legislation was vetoed in 2012, and failed passage in previous years. As you noted when you vetoed Senate Bill 1366 last year, "responsible people report the loss or theft of a firearm and irresponsible people do not." Imposing liability for failing to meet a statutory reporting window will not change these behaviors. (See Veto Message, Senate Bill 1366 (2012), attached hereto as Exhibit "A.")

In light of the foregoing, the NRA respectfully requests your veto of Senate Bill 299.

Sincerely,



Charles H. Cunningham
Director of State and Local Affairs

EXHIBIT A

BILL NUMBER: SB 1366
VETOED DATE: 09/28/2012

To the Members of the California State Senate:

I am returning Senate Bill 1366 without my signature.

This bill makes it an infraction (or a misdemeanor for the 3rd offense) to fail to report the theft or loss of a firearm to a local law enforcement agency within 48 hours of the time the owner knew, or reasonably should have known, that the firearm was lost or stolen.

The proponents urge that the bill will improve identification of gun traffickers and help law enforcement disarm people prohibited from possessing firearms. I am not convinced. For the most part, responsible people report the loss or theft of a firearm and irresponsible people do not. I am skeptical that this bill would change those behaviors.

Sincerely,

Edmund G. Brown Jr.