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## MEMORANDUM OF LAW

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**Re: Kunvirt Firearms, Inc. Kunvirt Fire Control Group**  
**Date: January 17, 2022**

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### I. ISSUE

Whether a firearm equipped with Kunvirt Firearms, Inc. Kunvirt Fire Control Group (“Kunvirt FCG”) is “semiautomatic” for purposes of California’s “assault weapon” restrictions?

### II. SHORT ANSWER

Because a firearm equipped with the Kunvirt FCG is incapable of firing a single cartridge, ejecting the empty case, and reloading the chamber each time the trigger is pulled and released without *also* manually operating the Kunvirt FCG’s safety selector for each trigger pull, the firearm cannot be classified as “semiautomatic” under California law. Therefore, firearms equipped with the Kunvirt FCG are also generally incapable of being classified as “assault weapons” under California law.

### III. ANALYSIS

#### A. Statutory/Regulatory Background

In 2016, California enacted Senate Bill No. 880 (“SB 880”) and Assembly Bill No. 1135 (“AB 1135”), both of which redefined the definition of an “assault weapon” as applied to certain

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rifles and pistols.<sup>1</sup> As a result of those changes, the following firearms are now classified as “assault weapons” under California law:

- A semiautomatic, centerfire rifle that does not have a fixed magazine but has any one of the following:
  - 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.
- A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.
- A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.
- A semiautomatic pistol that does not have a fixed magazine but has any one of the following:
  - 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 without burning the bearer’s hand, except a slide that encloses the barrel;
  - The capacity to accept a detachable magazine at some location outside of the pistol grip.
- A semiautomatic pistol with a fixed magazine at some location outside of the pistol grip.
- A semiautomatic shotgun that has both of the following:
  - A folding or telescoping stock; and,
  - A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

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<sup>1</sup> Neither of these bills changed the statutory definition as applied to shotguns. Nevertheless, the California Department of Justice expanded their application to certain shotguns via regulations. Recently, the adoption of Senate Bill No. 118 (“SB 118”) in 2020 changed the above statutory definitions to mirror those changes made by DOJ’s regulations regarding certain shotguns.

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- A semiautomatic shotgun that does not have a fixed magazine.
- Any shotgun with a revolving cylinder.

Cal. Pen. Code § 30515(a)(1-8).<sup>2</sup>

It should also be noted that since 1990, California has classified certain “semiautomatic” firearms as “assault weapons” based on their make and model. For purposes of brevity, the complete list has been excluded from this memorandum, but can be found online in the California Department of Justice, Bureau of Firearms (“DOJ”) “Assault Weapons Identification Guide.”<sup>3</sup> What’s more, following the adoption of SB 118 in 2020, California also classifies the following firearms as “assault weapons”:

- A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but has any one of the following:
  - 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;
  - A forward pistol grip;
  - 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 without burning the bearer’s hand, except a slide that encloses the barrel; or,
  - The capacity to accept a detachable magazine at some location outside of the pistol grip.
- A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.

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<sup>2</sup> As applied to semiautomatic shotguns that do not have a fixed magazine, this language was amended in 2020 following the adoption of SB 118. The language presented here reflects those changes.

<sup>3</sup> Available online at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/aws-guide.pdf>. See also Cal. Pen. Code § 30510; 11 C.C.R. §§ 5495-5499.

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- A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

Cal. Pen. Code § 30515(a)(9-11).

Except for shotguns equipped with revolving cylinders, all firearms classified as “assault weapons” under California law must be “semiautomatic.” In other words, if the firearm in question is not semiautomatic, then the firearm cannot be classified as an “assault weapon.”

### 1. Definition of “Semiautomatic” Under California Law

Prior to the adoption of SB 880 and AB 1135, California law did not expressly define the term “semiautomatic.” But that is no longer the case following DOJ’s regulatory definition adopted in 2017. The term is now expressly defined as follows:

- “Semiautomatic” means a firearm functionally able to fire a single cartridge, eject the empty case, and reload the chamber each time the trigger is pulled and released. Further, certain necessary mechanical parts that will allow a firearm to function in a semiautomatic nature must be present for a weapon to be deemed semiautomatic. A weapon clearly designed to be semiautomatic but lacking a firing pin, bolt carrier, gas tube, or some other crucial part of the firearm is not semiautomatic for purposes of Penal Code sections 30515, 30600, 30605(a), and 30900.
  - A mechanically whole semiautomatic firearm merely lacking ammunition and a proper magazine is a semiautomatic firearm.
  - A mechanically whole semiautomatic firearm disabled by a gun lock or other firearm safety device is a semiautomatic firearm. (All necessary parts are present, once the gun lock or firearm safety device is removed, and weapon can be loaded with a magazine and proper ammunition.)
  - With regard to an AR-15 style firearm, if a complete upper receiver and a complete lower receiver are completely detached from one another, but still in the possession or under the custody or control of the same person, the firearm is not a semiautomatic firearm.
  - A stripped AR-15 lower receiver, when sold at a California gun store, is not a semiautomatic firearm. (The action type, among other things, is undetermined.)

11 C.C.R. § 5471(hh).

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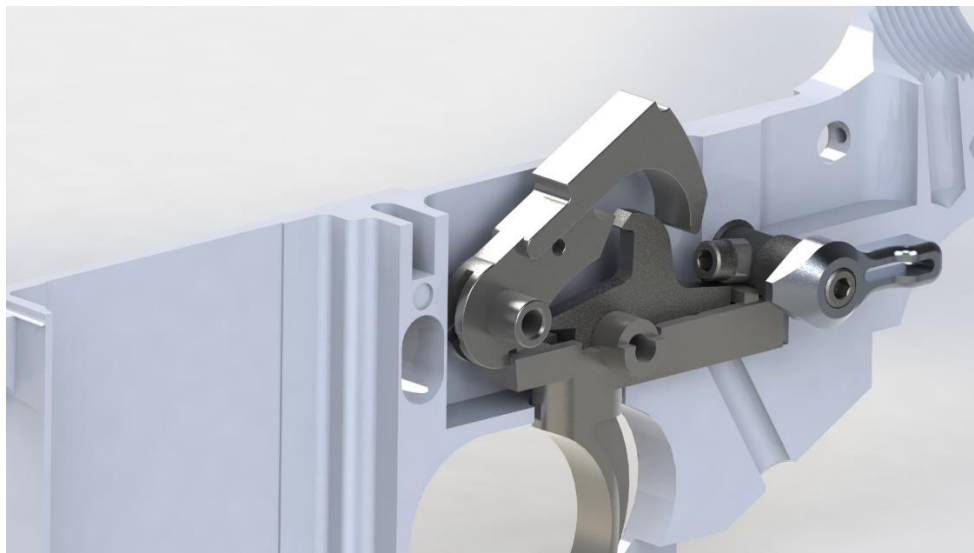
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## 2. Applicable Federal Laws

Under federal law, the term “semiautomatic rifle” is defined as “any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge. 18 U.S.C. § 921(a)(28). The application of this definition in the context of federal law is extremely limited, however. Generally, federal law prohibits persons from assembling a semiautomatic rifle from imported parts where the assembled firearm would be identical to any rifle or shotgun prohibited from importation under federal law (absent limited exceptions). 18 U.S.C. § 922(r). Although federal law previously restricted “semiautomatic assault weapons,” which included certain semiautomatic rifles, those provisions have been inoperative since 2004.<sup>4</sup> As a result, there are generally no restrictions regarding the possession, sale, or use of the Kunvirt FCG.

### A. Kunvirt FCG

Kunvirt Firearms, Inc. has designed a new fire control group for AR-15 platform firearms. Titled the Kunvirt Fire Control Group, this device replaces components within standard trigger and safety selector mechanisms of an AR-15’s fire control group.



*3D Model of a complete Kunvirt FCG installed in a cut-away AR-15 lower*

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<sup>4</sup> As originally adopted in 1994, the Federal “assault weapon” ban included a 10-year sunset provision. This meant that on September 13, 2004, the law was no longer in effect. Since that time, no federal legislation has been passed renewing the Federal ban.

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Astute observers will immediately notice the unique design of the safety selector. In addition to several modifications to the trigger mechanism, the Kunvirt FCG's safety selector serves two functions. First, it acts as a manual safety. Second, it prevents the firearm from discharging more than a single round with each pull of the trigger.



Kunvirt FCG Safety Selector

The second function of the Kunvirt FCG is accomplished by the unique design of the safety selector, trigger, and disconnecter. After discharging a round, the Kunvirt FCG prevents the firearm from being subsequently discharged without first manually cycling the safety selector from the “fire” position, back to “safe,” and then back to “fire.” These steps must all be undertaken before the firearm can discharge another round.

## **B. Analysis**

As noted above, California defines the term “Semiautomatic” to mean “a firearm functionally able to fire a single cartridge, eject the empty case, and reload the chamber *each time the trigger is pulled and released.*” 11 C.C.R. § 5471(hh) (emphasis added). While an AR-15 style firearm equipped with the Kunvirt FCG is functionally able to fire a single cartridge, eject the empty case, and reload the chamber with a trigger pull, it cannot do this *each time* the trigger is pulled and released without first manually cycling the safety selector from the “fire” position, back to “safe,” and then back to “fire.” A firearm equipped with the Kunvirt FCG is not “semiautomatic” as that term is defined under DOJ regulations.

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Because a firearm equipped with the Kunvirt FCG cannot lawfully be classified as “semiautomatic” under California law, such firearms cannot be classified as “assault weapons” under Penal Code section 30510 or Penal Code section 30515. As applied to AR-15 rifles equipped with the Kunvirt FCG, this would mean the rifle could be equipped with any of the expressly listed features discussed above without violating California’s “assault weapon” restrictions.

For similar reasons, firearms equipped with the Kunvirt FCG cannot be classified as “semiautomatic” under existing federal laws. Under federal law, a “semiautomatic rifle” is a “repeating” rifle that requires a separate pull of the trigger to fire each cartridge. 18 U.S.C. § 921(a)(28). With the Kunvirt FCG, however, the firearm is incapable of repeatedly discharging a round with a single, separate pull of the trigger. This is again because the Kunvirt FCG requires the additional step of cycling the safety selector before the firearm can discharge another round.

### **1. Additional Considerations**

Individuals and business should be cautioned that simply because a firearm equipped with the Kunvirt FCG is not “semiautomatic” and therefore not an “assault weapon” does not also mean the firearm is not prohibited under state or federal law for other reasons. An example would be rifles with a barrel length of less than 16 inches or an overall length less than 26 inches, both of which are prohibited under state and federal law as “short-barreled rifles” regardless of action type. Cal. Pen. Code §§ 17170, 33210; 18 USC §§ 921(a)(8), 922(a)(4), 922(b)(4). Individuals unsure whether their firearm is prohibited under state or federal law should consult an experienced firearms attorney.

What’s more, although firearms equipped with the Kunvirt FCG are not “assault weapons” under California law, local law enforcement officials may be unaware of the Kunvirt FCG’s function, or otherwise disagree with the analysis in this memorandum. By its nature, the Kunvirt FCG’s main components are hidden from plain view when properly installed. This may result in local law enforcement mistakenly determining firearms equipped with the Kunvirt FCG as “semiautomatic” and therefore “assault weapons” under California law. Individuals faced with such issues should consult an experienced firearms attorney.

## **II. CONCLUSION**

Because a firearm equipped with the Kunvirt FCG is incapable of firing a single cartridge, ejecting the empty case, and reloading the chamber each time the trigger is pulled and released without also manually operating the thumb safety each time the trigger is pulled and released, the firearm cannot be classified as “semiautomatic” for purposes of California’s

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restrictions relating to “assault weapons.” As a result, firearms equipped with the Kunvirt FCG cannot be classified as “assault weapons” under California law. However, users should still be cautioned that their firearms may nevertheless be subject to scrutiny by local law enforcement who are unable to reach this same conclusion in the field.

**For Further Assistance:**

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