

AMENDED IN ASSEMBLY JUNE 25, 2001

AMENDED IN SENATE MAY 1, 2001

AMENDED IN SENATE APRIL 16, 2001

**SENATE BILL**

**No. 950**

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**Introduced by Senator Brulte  
(Principal coauthor: Senator Scott)**

February 23, 2001

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An act to *amend Sections 12001.6, 12021, 12028, and 12071 of, to add Section 12028.7 to, and to add Article 1.5 (commencing with Section 12010) to Chapter 1 of Title 2 of Part 4 of, the Penal Code, relating to firearms.*

LEGISLATIVE COUNSEL'S DIGEST

SB 950, as amended, Brulte. Firearms: prohibited possession: data base.

*Existing law prohibits persons convicted of certain offenses from owning, possessing, or exerting custody or control over a firearm, as specified. Violation of these provisions is a felony.*

*This bill would require the court, at the time the judgment is imposed, to provide to the defendant, on a form supplied by the Department of Justice, a notice regarding that firearm prohibition and a method to dispose of a firearm, as specified. This bill would also require firearms dealers to provide the notice under specified circumstances.*

*Existing law provides procedures for the disposal of firearms used in crimes.*

*This bill would, in addition, provide a procedure for persons ineligible to own, possess, or have custody or control of a firearm because of a specified conviction to dispose of the firearm.*

*Existing law provides for seizure and return of firearms in specified circumstances.*

*This bill would, in addition, provide a procedure for the return of seized firearms where existing procedures are not applicable.*

Existing law establishes various automated information systems in regard to the transfer and possession of firearms, and persons who are prohibited from owning or possessing firearms.

This bill would, contingent upon an appropriation in the 2001–02 Budget Act to the Department of Justice for this purpose, establish the Prohibited Armed Persons File, a data base that would cross-reference information for persons relative to the purchase and possession of firearms on or after January 1, 1991, and information indicating those persons who have subsequently been prohibited from owning or possessing firearms, as specified.

*This bill would also make a technical change correcting a cross-reference.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 12001.6 of the Penal Code is amended*  
2 *to read:*

3 12001.6. As used in this chapter, an offense which involves  
4 the violent use of a firearm includes any of the following:

5 (a) A violation of paragraph (2) or (3) of subdivision (a) of  
6 Section 245 or a violation of subdivision ~~(e)~~ (d) of Section 245.

7 (b) A violation of Section 246.

8 (c) A violation of paragraph (2) of subdivision (a) of Section  
9 417.

10 (d) A violation of subdivision (c) of Section 417.

11 SEC. 2. Article 1.5 (commencing with Section 12010) is  
12 added to Chapter 1 of Title 2 of Part 4 of the Penal Code, to read:

13

14 Article 1.5. Prohibited Armed Persons File

15

16 12010. (a) The Attorney General shall establish and maintain  
17 an online data base to be known as the Prohibited Armed Persons  
18 File. The purpose of the file is to cross-reference persons who have  
19 ownership or possession of a firearm on or after January 1, 1991,



1 as indicated by a Dealers' Record of Sale recorded in the  
2 Automated Firearms System, and who, subsequent to the date of  
3 that ownership or possession of a firearm, fall within a class of  
4 persons who are prohibited from owning or possessing a firearm.

5 (b) The information contained in the Prohibited Armed  
6 Persons File shall only be available to those entities specified in,  
7 and pursuant to, subdivision (b) or (c) of Section 11105, through  
8 the California Law Enforcement Telecommunications System, for  
9 the purpose of determining if persons are armed and prohibited  
10 from possessing firearms.

11 12011. The Prohibited Armed Persons File data base shall  
12 function as follows:

13 (a) Upon entry into the Automated Criminal History System of  
14 a disposition for a conviction of any felony, a conviction for any  
15 firearms-prohibiting charge specified in Section 12021, a  
16 conviction for an offense described in Section 12021.1, a firearms  
17 prohibition pursuant to Section 8100 or 8103 of the Welfare and  
18 Institutions Code, or any firearms possession prohibition  
19 identified by the federal National Instant Check System, the  
20 Department of Justice shall determine if the subject has an entry  
21 in the Automated Firearms System indicating possession or  
22 ownership of a firearm on or after January 1, 1991, or an assault  
23 weapon registration.

24 (b) Upon an entry into any department automated information  
25 system that is used for the identification of persons who are  
26 prohibited from acquiring, owning, or possessing firearms, the  
27 department shall determine if the subject has an entry in the  
28 Automated Firearms System indicating ownership or possession  
29 of a firearm on or after January 1, 1991, or an assault weapon  
30 registration.

31 (c) If the department determines that, pursuant to subdivision  
32 (a) or (b), the subject has an entry in the Automated Firearms  
33 System indicating possession or ownership of a firearm on or after  
34 January 1, 1991, or an assault weapon registration, the following  
35 information shall be entered into the Prohibited Armed Persons  
36 File:

- 37 (1) The subject's name.
- 38 (2) The subject's date of birth.
- 39 (3) The subject's physical description.

1 (4) Any other identifying information regarding the subject  
2 that is deemed necessary by the Attorney General.

3 (5) The basis of the firearms possession prohibition.

4 (6) A description of all firearms owned or possessed by the  
5 subject, as reflected by the Automated Firearms System.

6 12012. The Attorney General shall provide investigative  
7 assistance to local law enforcement agencies to better ensure the  
8 investigation of individuals who are armed and prohibited from  
9 possessing a firearm.

10 ~~SEC. 2.~~

11 *SEC. 3. Section 12021 of the Penal Code is amended to read:*

12 12021. (a) (1) Any person who has been convicted of a  
13 felony under the laws of the United States, of the State of  
14 California, or any other state, government, or country, or of an  
15 offense enumerated in subdivision (a), (b), or (d) of Section  
16 12001.6, or who is addicted to the use of any narcotic drug, who  
17 owns or has in his or her possession or under his or her custody or  
18 control any firearm is guilty of a felony.

19 (2) Any person who has two or more convictions for violating  
20 paragraph (2) of subdivision (a) of Section 417 and who owns or  
21 has in his or her possession or under his or her custody or control  
22 any firearm is guilty of a felony.

23 (b) Notwithstanding subdivision (a), any person who has been  
24 convicted of a felony or of an offense enumerated in Section  
25 12001.6, when that conviction results from certification by the  
26 juvenile court for prosecution as an adult in an adult court under  
27 Section 707 of the Welfare and Institutions Code, who owns or has  
28 in his or her possession or under his or her custody or control any  
29 firearm is guilty of a felony.

30 (c) (1) Except as provided in subdivision (a) or paragraph (2)  
31 of this subdivision, any person who has been convicted of a  
32 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,  
33 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,  
34 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5,  
35 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or  
36 12024, subdivision (b) or (d) of Section 12034, Section 12040,  
37 subdivision (b) of Section 12072, subdivision (a) of former  
38 Section 12100, Section 12220, 12320, or 12590, or Section 8100,  
39 8101, or 8103 of the Welfare and Institutions Code, any  
40 firearm-related offense pursuant to Sections 871.5 and 1001.5 of



1 the Welfare and Institutions Code, or of the conduct punished in  
2 paragraph (3) of subdivision (g) of Section 12072, and who, within  
3 10 years of the conviction, owns, or has in his or her possession or  
4 under his or her custody or control, any firearm is guilty of a public  
5 offense, which shall be punishable by imprisonment in a county  
6 jail not exceeding one year or in the state prison, by a fine not  
7 exceeding one thousand dollars (\$1,000), or by both that  
8 imprisonment and fine. The court, on forms prescribed by the  
9 Department of Justice, shall notify the department of persons  
10 subject to this subdivision. However, the prohibition in this  
11 paragraph may be reduced, eliminated, or conditioned as provided  
12 in paragraph (2) or (3).

13 (2) Any person employed as a peace officer described in  
14 Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose  
15 employment or livelihood is dependent on the ability to legally  
16 possess a firearm, who is subject to the prohibition imposed by this  
17 subdivision because of a conviction under Section 273.5, 273.6, or  
18 646.9, may petition the court only once for relief from this  
19 prohibition. The petition shall be filed with the court in which the  
20 petitioner was sentenced. If possible, the matter shall be heard  
21 before the same judge that sentenced the petitioner. Upon filing the  
22 petition, the clerk of the court shall set the hearing date and shall  
23 notify the petitioner and the prosecuting attorney of the date of the  
24 hearing. Upon making each of the following findings, the court  
25 may reduce or eliminate the prohibition, impose conditions on  
26 reduction or elimination of the prohibition, or otherwise grant  
27 relief from the prohibition as the court deems appropriate:

28 (A) Finds by a preponderance of the evidence that the  
29 petitioner is likely to use a firearm in a safe and lawful manner.

30 (B) Finds that the petitioner is not within a prohibited class as  
31 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,  
32 and the court is not presented with any credible evidence that the  
33 petitioner is a person described in Section 8100 or 8103 of the  
34 Welfare and Institutions Code.

35 (C) Finds that the petitioner does not have a previous  
36 conviction under this subdivision no matter when the prior  
37 conviction occurred.

38 In making its decision, the court shall consider the petitioner's  
39 continued employment, the interest of justice, any relevant  
40 evidence, and the totality of the circumstances. The court shall



1 require, as a condition of granting relief from the prohibition under  
2 this section, that the petitioner agree to participate in counseling  
3 as deemed appropriate by the court. Relief from the prohibition  
4 shall not relieve any other person or entity from any liability that  
5 might otherwise be imposed. It is the intent of the Legislature that  
6 courts exercise broad discretion in fashioning appropriate relief  
7 under this paragraph in cases in which relief is warranted.  
8 However, nothing in this paragraph shall be construed to require  
9 courts to grant relief to any particular petitioner. It is the intent of  
10 the Legislature to permit persons who were convicted of an offense  
11 specified in Section 273.5, 273.6, or 646.9 to seek relief from the  
12 prohibition imposed by this subdivision.

13 (3) Any person who is subject to the prohibition imposed by  
14 this subdivision because of a conviction of an offense prior to that  
15 offense being added to paragraph (1), may petition the court only  
16 once for relief from this prohibition. The petition shall be filed  
17 with the court in which the petitioner was sentenced. If possible,  
18 the matter shall be heard before the same judge that sentenced the  
19 petitioner. Upon filing the petition, the clerk of the court shall set  
20 the hearing date and notify the petitioner and the prosecuting  
21 attorney of the date of the hearing. Upon making each of the  
22 following findings, the court may reduce or eliminate the  
23 prohibition, impose conditions on reduction or elimination of the  
24 prohibition, or otherwise grant relief from the prohibition as the  
25 court deems appropriate:

26 (A) Finds by a preponderance of the evidence that the  
27 petitioner is likely to use a firearm in a safe and lawful manner.

28 (B) Finds that the petitioner is not within a prohibited class as  
29 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,  
30 and the court is not presented with any credible evidence that the  
31 petitioner is a person described in Section 8100 or 8103 of the  
32 Welfare and Institutions Code.

33 (C) Finds that the petitioner does not have a previous  
34 conviction under this subdivision, no matter when the prior  
35 conviction occurred.

36 In making its decision, the court may consider the interest of  
37 justice, any relevant evidence, and the totality of the  
38 circumstances. It is the intent of the Legislature that courts exercise  
39 broad discretion in fashioning appropriate relief under this  
40 paragraph in cases in which relief is warranted. However, nothing



1 in this paragraph shall be construed to require courts to grant relief  
2 to any particular petitioner.

3 (4) Law enforcement officials who enforce the prohibition  
4 specified in this subdivision against a person who has been granted  
5 relief pursuant to paragraph (2) or (3), shall be immune from any  
6 liability for false arrest arising from the enforcement of this  
7 subdivision unless the person has in his or her possession a  
8 certified copy of the court order that granted the person relief from  
9 the prohibition. This immunity from liability shall not relieve any  
10 person or entity from any other liability that might otherwise be  
11 imposed.

12 (d) (1) Any person who, as an express condition of probation,  
13 is prohibited or restricted from owning, possessing, controlling,  
14 receiving, or purchasing a firearm and who owns, or has in his or  
15 her possession or under his or her custody or control, any firearm  
16 but who is not subject to subdivision (a) or (c) is guilty of a public  
17 offense, which shall be punishable by imprisonment in a county  
18 jail not exceeding one year or in the state prison, by a fine not  
19 exceeding one thousand dollars (\$1,000), or by both that  
20 imprisonment and fine. The court, on forms provided by the  
21 Department of Justice, shall notify the department of persons  
22 subject to this subdivision. The notice shall include a copy of the  
23 order of probation and a copy of any minute order or abstract  
24 reflecting the order and conditions of probation.

25 (2) *For any person who is subject to subdivision (a), (b), or (c),*  
26 *the court shall, at the time judgment is imposed, provide on a form*  
27 *supplied by the Department of Justice, a notice to the defendant*  
28 *prohibited by this section from owning, possessing or having under*  
29 *his or her custody or control, any firearm. The notice shall inform*  
30 *the defendant of the prohibition regarding firearms, and that the*  
31 *person has the right to dispose of any firearms that they own*  
32 *pursuant to Section 12028. Failure to provide the notice shall not*  
33 *be a defense to a violation of this section.*

34 (e) Any person who (1) is alleged to have committed an offense  
35 listed in subdivision (b) of Section 707 of the Welfare and  
36 Institutions Code, an offense described in subdivision (b) of  
37 Section 1203.073, or any offense enumerated in paragraph (1) of  
38 subdivision (c), and (2) is subsequently adjudged a ward of the  
39 juvenile court within the meaning of Section 602 of the Welfare  
40 and Institutions Code because the person committed an offense



1 listed in subdivision (b) of Section 707 of the Welfare and  
2 Institutions Code, an offense described in subdivision (b) of  
3 Section 1203.073, or any offense enumerated in paragraph (1) of  
4 subdivision (c) shall not own, or have in his or her possession or  
5 under his or her custody or control, any firearm until the age of 30  
6 years. A violation of this subdivision shall be punishable by  
7 imprisonment in a county jail not exceeding one year or in the state  
8 prison, by a fine not exceeding one thousand dollars (\$1,000), or  
9 by both that imprisonment and fine. The juvenile court, on forms  
10 prescribed by the Department of Justice, shall notify the  
11 department of persons subject to this subdivision.  
12 Notwithstanding any other law, the forms required to be submitted  
13 to the department pursuant to this subdivision may be used to  
14 determine eligibility to acquire a firearm.

15 (f) Subdivision (a) shall not apply to a person who has been  
16 convicted of a felony under the laws of the United States unless  
17 either of the following criteria is satisfied:

18 (1) Conviction of a like offense under California law can only  
19 result in imposition of felony punishment.

20 (2) The defendant was sentenced to a federal correctional  
21 facility for more than 30 days, or received a fine of more than one  
22 thousand dollars (\$1,000), or received both punishments.

23 (g) (1) Every person who purchases or receives, or attempts to  
24 purchase or receive, a firearm knowing that he or she is subject to  
25 a protective order as defined in Section 6218 of the Family Code,  
26 Section 136.2, or a temporary restraining order or injunction  
27 issued pursuant to Section 527.6 or 527.8 of the Code of Civil  
28 Procedure, is guilty of a public offense, which shall be punishable  
29 by imprisonment in a county jail not exceeding one year or in the  
30 state prison, by a fine not exceeding one thousand dollars (\$1,000),  
31 or by both that imprisonment and fine. This subdivision does not  
32 apply unless the copy of the restraining order personally served on  
33 the person against whom the restraining order is issued contains a  
34 notice in bold print stating (1) that the person is prohibited from  
35 purchasing or receiving or attempting to purchase or receive a  
36 firearm and (2) specifying the penalties for violating this  
37 subdivision, or a court has provided actual verbal notice of the  
38 firearm prohibition and penalty as provided in Section 6304 of the  
39 Family Code.



1 (2) Every person who owns or possesses a firearm knowing that  
2 he or she is prohibited from owning or possessing a firearm by the  
3 provisions of a protective order as defined in Section 6218 of the  
4 Family Code, Section 136.2 of the Penal Code, or a temporary  
5 restraining order or injunction issued pursuant to Section 527.6 or  
6 527.8 of the Code of Civil Procedure, is guilty of a public offense,  
7 which shall be punishable by imprisonment in a county jail not  
8 exceeding one year, by a fine not exceeding one thousand dollars  
9 (\$1,000), or by both that imprisonment and fine. This subdivision  
10 does not apply unless a copy of the restraining order personally  
11 served on the person against whom the restraining order is issued  
12 contains a notice in bold print stating (1) that the person is  
13 prohibited from owning or possessing or attempting to own or  
14 possess a firearm and (2) specifying the penalties for violating this  
15 subdivision, or a court has provided actual verbal notice of the  
16 firearm prohibition and penalty as provided in Section 6304 of the  
17 Family Code.

18 (3) Judicial Council shall provide notice on all protective  
19 orders that the respondent is prohibited from owning, possessing,  
20 purchasing, or receiving a firearm while the protective order is in  
21 effect and that the firearm shall be relinquished to the local law  
22 enforcement agency for that jurisdiction or sold to a licensed gun  
23 dealer, and that proof of surrender or sale shall be filed within a  
24 specified time of receipt of the order. The order shall also state on  
25 its face the expiration date for relinquishment.

26 (4) If probation is granted upon conviction of a violation of this  
27 subdivision, the court shall impose probation consistent with the  
28 provisions of Section 1203.097.

29 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is  
30 justifiable where all of the following conditions are met:

31 (A) The person found the firearm or took the firearm from a  
32 person who was committing a crime against him or her.

33 (B) The person possessed the firearm no longer than was  
34 necessary to deliver or transport the firearm to a law enforcement  
35 agency for that agency's disposition according to law.

36 (C) If the firearm was transported to a law enforcement agency,  
37 it was transported in accordance with paragraph (18) of  
38 subdivision (a) of Section 12026.2.

39 (D) If the firearm is being transported to a law enforcement  
40 agency, the person transporting the firearm has given prior notice



1 to the law enforcement agency that he or she is transporting the  
2 firearm to the law enforcement agency for disposition according  
3 to law.

4 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or  
5 (e), the trier of fact shall determine whether the defendant was  
6 acting within the provisions of the exemption created by this  
7 subdivision.

8 (3) The defendant has the burden of proving by a  
9 preponderance of the evidence that he or she comes within the  
10 provisions of the exemption created by this subdivision.

11 *SEC. 4. Section 12028 of the Penal Code is amended to read:*

12 12028. (a) The unlawful concealed carrying upon the person  
13 or within the vehicle of the carrier of any explosive substance,  
14 other than fixed ammunition, dirk, or dagger, as provided in  
15 Section 12020, the unlawful concealed carrying upon the person  
16 or within the vehicle of the carrier of any weapons in violation of  
17 Section 12025, and the unlawful possession or carrying of any  
18 item in violation of Section 653k is a nuisance.

19 (b) A firearm of any nature owned or possessed in violation of  
20 Section 12021, 12021.1, or 12101 or used in the commission of  
21 any misdemeanor as provided in this code, any felony, or an  
22 attempt to commit any misdemeanor as provided in this code or  
23 any felony, is, upon a conviction of the defendant or upon a  
24 juvenile court finding that an offense which would be a  
25 misdemeanor or felony if committed by an adult was committed  
26 or attempted by the juvenile with the use of a firearm, a nuisance.  
27 A finding that the defendant was guilty of the offense but was  
28 insane at the time the offense was committed is a conviction for the  
29 purposes of this section.

30 (c) Any weapon described in subdivision (a), or, upon  
31 conviction of the defendant or upon a juvenile court finding that  
32 an offense which would be a misdemeanor or felony if committed  
33 by an adult was committed or attempted by the juvenile with the  
34 use of a firearm, any weapon described in subdivision (b) shall be  
35 surrendered to the sheriff of a county or the chief of police or other  
36 head of a municipal police department of any city or city and  
37 county or the chief of police of any campus of the University of  
38 California or the California State University or the Commissioner  
39 of the California Highway Patrol. For purposes of this subdivision,  
40 the Commissioner of the California Highway Patrol shall receive



1 only weapons that were confiscated by a member of the California  
2 Highway Patrol. The officers to whom the weapons are  
3 surrendered, except upon the certificate of a judge of a court of  
4 record, or of the district attorney of the county, that the retention  
5 thereof is necessary or proper to the ends of justice, may annually,  
6 between the 1st and 10th days of July, in each year, offer the  
7 weapons, which the officers in charge of them consider to have  
8 value with respect to sporting, recreational, or collection purposes,  
9 for sale at public auction to persons licensed pursuant to Section  
10 12071 to engage in businesses involving any weapon purchased.  
11 If any weapon has been stolen and is thereafter recovered from the  
12 thief or his or her transferee, or is used in such a manner as to  
13 constitute a nuisance pursuant to subdivision (a) or (b) without the  
14 prior knowledge of its lawful owner that it would be so used, it  
15 shall not be so offered for sale but shall be restored to the lawful  
16 owner, as soon as its use as evidence has been served, upon his or  
17 her identification of the weapon and proof of ownership.

18 (d) If, under this section, a weapon is not of the type that can  
19 be sold to the public, generally, or is not sold pursuant to  
20 subdivision (c), the weapon, in the month of July, next succeeding,  
21 or sooner, if necessary to conserve local resources including space  
22 and utilization of personnel who maintain files and security of  
23 those weapons, shall be destroyed so that it can no longer be used  
24 as such a weapon except upon the certificate of a judge of a court  
25 of record, or of the district attorney of the county, that the retention  
26 of it is necessary or proper to the ends of justice.

27 (e) This section does not apply to any firearm in the possession  
28 of the Department of Fish and Game or which was used in the  
29 violation of any provision of the Fish and Game Code or any  
30 regulation adopted pursuant thereto, or which is forfeited pursuant  
31 to Section 5008.6 of the Public Resources Code.

32 (f) No stolen weapon shall be sold or destroyed pursuant to  
33 subdivision (c) or (d) unless reasonable notice is given to its lawful  
34 owner, if his or her identity and address can be reasonably  
35 ascertained.

36 (g) *A person who has received notice pursuant to paragraph (2)*  
37 *of subdivision (d) of Section 12021 shall dispose of any firearm in*  
38 *their possession, under their custody or control, or that is owned*  
39 *by that person as follows:*



1 (1) If the person has possession, custody or control of a firearm  
2 owned by another, the person shall cause the firearm to be returned  
3 to the owner, or otherwise cause the lawful disposal of the firearm,  
4 provided, however, that in any event the person will not retain  
5 possession, custody or control of the firearm.

6 (2) If the person owns a firearm, the person shall designate in  
7 writing on a prohibited person notice form provided by the  
8 Department of Justice, a person to whom the firearm shall be  
9 transferred. The designee shall, within 30 days of being  
10 designated, sell or otherwise transfer ownership of the firearm, or  
11 otherwise permanently dispose of the firearm, in compliance with  
12 law. If the firearm is in the custody of a law enforcement agency or  
13 the court, and the firearm is no longer needed as evidence or an  
14 exhibit, the law enforcement agency or court shall transfer the  
15 firearm to the designee within 10 business days of being provided  
16 a copy of the written designation by the designee.

17 (3) If the firearm is in the custody of a law enforcement agency  
18 or the court, and the firearm is no longer needed as evidence or an  
19 exhibit, and the firearm is not owned by the person subject to notice  
20 pursuant to paragraph (2) of subdivision (d) of Section 12021, the  
21 law enforcement agency or court shall transfer the firearm to the  
22 owner within 10 business days of being provided a copy of that  
23 notice, provided, however, that the return of the firearm does not  
24 constitute a return to the prohibited person's possession, custody  
25 or control.

26 SEC. 5. Section 12028.7 is added to the Penal Code, to read:  
27 12028.7. Except where a procedure is already provided by  
28 existing law, or other provisions of law apply, when a firearm is  
29 taken into custody by a law enforcement officer, the officer shall  
30 issue the person who possessed the firearm a receipt describing the  
31 firearm, and listing any serial number or other identification on  
32 the firearm. The receipt shall indicate where the firearm may be  
33 recovered and the date after which the owner or possessor may  
34 recover the firearm, provided however, that no firearm shall be  
35 held less than 48 hours, and no more than 72 hours. In any civil  
36 action or proceeding for the return of a firearm seized and not  
37 returned within 72 hours, pursuant to this section, the court shall  
38 award reasonable attorney's fees to the prevailing party. Nothing  
39 in this section is intended to displace any existing law regarding  
40 the seizure or return of firearms.



1 SEC. 6. Section 12071 of the Penal Code is amended to read:

2 12071. (a) (1) As used in this chapter, the term “licensee,”  
3 “person licensed pursuant to Section 12071,” or “dealer” means  
4 a person who has all of the following:

5 (A) A valid federal firearms license.

6 (B) Any regulatory or business license, or licenses, required by  
7 local government.

8 (C) A valid seller’s permit issued by the State Board of  
9 Equalization.

10 (D) A certificate of eligibility issued by the Department of  
11 Justice pursuant to paragraph (4).

12 (E) A license issued in the format prescribed by paragraph (6).

13 (F) Is among those recorded in the centralized list specified in  
14 subdivision (e).

15 (2) The duly constituted licensing authority of a city, county, or  
16 a city and county shall accept applications for, and may grant  
17 licenses permitting, licensees to sell firearms at retail within the  
18 city, county, or city and county. The duly constituted licensing  
19 authority shall inform applicants who are denied licenses of the  
20 reasons for the denial in writing.

21 (3) No license shall be granted to any applicant who fails to  
22 provide a copy of his or her valid federal firearms license, valid  
23 seller’s permit issued by the State Board of Equalization, and the  
24 certificate of eligibility described in paragraph (4).

25 (4) A person may request a certificate of eligibility from the  
26 Department of Justice and the Department of Justice shall issue a  
27 certificate to an applicant if the department’s records indicate that  
28 the applicant is not a person who is prohibited from possessing  
29 firearms.

30 (5) The department shall adopt regulations to administer the  
31 certificate of eligibility program and shall recover the full costs of  
32 administering the program by imposing fees assessed to applicants  
33 who apply for those certificates.

34 (6) A license granted by the duly constituted licensing  
35 authority of any city, county, or city and county, shall be valid for  
36 not more than one year from the date of issuance and shall be in  
37 one of the following forms:

38 (A) In the form prescribed by the Attorney General.



1 (B) A regulatory or business license that states on its face  
2 “Valid for Retail Sales of Firearms” and is endorsed by the  
3 signature of the issuing authority.

4 (C) A letter from the duly constituted licensing authority  
5 having primary jurisdiction for the applicant’s intended business  
6 location stating that the jurisdiction does not require any form of  
7 regulatory or business license or does not otherwise restrict or  
8 regulate the sale of firearms.

9 (7) Local licensing authorities may assess fees to recover their  
10 full costs of processing applications for licenses.

11 (b) A license is subject to forfeiture for a breach of any of the  
12 following prohibitions and requirements:

13 (1) (A) Except as provided in subparagraphs (B) and (C), the  
14 business shall be conducted only in the buildings designated in the  
15 license.

16 (B) A person licensed pursuant to subdivision (a) may take  
17 possession of firearms and commence preparation of registers for  
18 the sale, delivery, or transfer of firearms at gun shows or events,  
19 as defined in Section 178.100 of Title 27 of the Code of Federal  
20 Regulations, or its successor, if the gun show or event is not  
21 conducted from any motorized or towed vehicle. A person  
22 conducting business pursuant to this subparagraph shall be entitled  
23 to conduct business as authorized herein at any gun show or event  
24 in the state without regard to the jurisdiction within this state that  
25 issued the license pursuant to subdivision (a), provided the person  
26 complies with (i) all applicable laws, including, but not limited to,  
27 the waiting period specified in subparagraph (A) of paragraph (3),  
28 and (ii) all applicable local laws, regulations, and fees, if any.

29 A person conducting business pursuant to this subparagraph  
30 shall publicly display his or her license issued pursuant to  
31 subdivision (a), or a facsimile thereof, at any gun show or event,  
32 as specified in this subparagraph.

33 (C) A person licensed pursuant to subdivision (a) may engage  
34 in the sale and transfer of firearms other than pistols, revolvers, or  
35 other firearms capable of being concealed upon the person, at  
36 events specified in subdivision (g) of Section 12078, subject to the  
37 prohibitions and restrictions contained in that subdivision.

38 A person licensed pursuant to subdivision (a) also may accept  
39 delivery of firearms other than pistols, revolvers, or other firearms  
40 capable of being concealed upon the person, outside the building



1 designated in the license, provided the firearm is being donated for  
2 the purpose of sale or transfer at an auction or similar event  
3 specified in subdivision (g) of Section 12078.

4 (D) The firearm may be delivered to the purchaser, transferee,  
5 or person being loaned the firearm at one of the following places:

6 (i) The building designated in the license.

7 (ii) The places specified in subparagraph (B) or (C).

8 (iii) The place of residence of, the fixed place of business of,  
9 or on private property owned or lawfully possessed by, the  
10 purchaser, transferee, or person being loaned the firearm.

11 (2) The license or a copy thereof, certified by the issuing  
12 authority, shall be displayed on the premises where it can easily be  
13 seen.

14 (3) No firearm shall be delivered:

15 (A) Within 10 days of the application to purchase, or, after  
16 notice by the department pursuant to subdivision (d) of Section  
17 12076, within 10 days of the submission to the department of any  
18 correction to the application, or within 10 days of the submission  
19 to the department of any fee required pursuant to subdivision (e)  
20 of Section 12076, whichever is later.

21 (B) Unless unloaded and securely wrapped or unloaded and in  
22 a locked container.

23 (C) Unless the purchaser, transferee, or person being loaned the  
24 firearm presents clear evidence of his or her identity and age to the  
25 dealer.

26 (D) Whenever the dealer is notified by the Department of  
27 Justice that the person is in a prohibited class described in Section  
28 12021 or 12021.1 of this code or Section 8100 or 8103 of the  
29 Welfare and Institutions Code. *The dealer shall make available to*  
30 *the person in the prohibited class a prohibited notice form,*  
31 *provided by the department, stating that the person is prohibited*  
32 *from owning or possessing a firearm, that the person may obtain*  
33 *from the department the reason for the prohibition, and*  
34 *instructions regarding how a person may dispose of any firearms*  
35 *owned or in their possession, pursuant to subdivision (g) of Section*  
36 *12028.*

37 (4) No pistol, revolver, or other firearm or imitation thereof  
38 capable of being concealed upon the person, or placard advertising  
39 the sale or other transfer thereof, shall be displayed in any part of  
40 the premises where it can readily be seen from the outside.



1 (5) The licensee shall agree to and shall act properly and  
2 promptly in processing firearms transactions pursuant to Section  
3 12082.

4 (6) The licensee shall comply with Sections 12073, 12076, and  
5 12077, subdivisions (a) and (b) of Section 12072, and subdivision  
6 (a) of Section 12316.

7 (7) The licensee shall post conspicuously within the licensed  
8 premises the following warnings in block letters not less than one  
9 inch in height:

10 (A) ~~“IF YOU LEAVE KEEP A LOADED FIREARM~~  
11 ~~WHERE A CHILD WITHIN ANY PREMISES UNDER YOUR~~  
12 ~~CUSTODY OR CONTROL, AND A PERSON UNDER 16~~  
13 ~~OBTAINS IT AND IMPROPERLY USES IT, RESULTING IN~~  
14 ~~INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE,~~  
15 ~~YOU MAY BE FINED OR SENT TO PRISON GUILTY OF A~~  
16 ~~MISDEMEANOR OR A FELONY UNLESS YOU STORED THE~~  
17 ~~FIREARM IN A LOCKED CONTAINER OR LOCKED THE~~  
18 ~~FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM~~  
19 ~~TEMPORARILY FUNCTIONING.”~~

20 (B) ~~“IF YOU KEEP A LOADED FIREARM, OR A PISTOL,~~  
21 ~~REVOLVER, OR OTHER FIREARM CAPABLE OF BEING~~  
22 ~~CONCEALED UPON THE PERSON, WITHIN ANY~~  
23 ~~PREMISES UNDER YOUR CUSTODY OR CONTROL, AND~~  
24 ~~A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM,~~  
25 ~~AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF~~  
26 ~~A MISDEMEANOR OR A FELONY, UNLESS YOU STORED~~  
27 ~~THE FIREARM IN A LOCKED CONTAINER, OR LOCKED~~  
28 ~~THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT~~  
29 ~~FROM TEMPORARILY FUNCTIONING.”~~

30 (C) “DISCHARGING FIREARMS IN POORLY  
31 VENTILATED AREAS, CLEANING FIREARMS, OR  
32 HANDLING AMMUNITION MAY RESULT IN EXPOSURE  
33 TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH  
34 DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS  
35 PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT  
36 ALL TIMES. WASH HANDS THOROUGHLY AFTER  
37 EXPOSURE.”

38 (D) “FEDERAL REGULATIONS PROVIDE THAT IF YOU  
39 DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM  
40 THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30



1 DAYS AFTER YOU COMPLETE THE INITIAL  
2 BACKGROUND CHECK PAPERWORK, THEN YOU HAVE  
3 TO GO THROUGH THE BACKGROUND CHECK PROCESS  
4 A SECOND TIME IN ORDER TO TAKE PHYSICAL  
5 POSSESSION OF THAT FIREARM.”

6 (E) “NO PERSON SHALL MAKE AN APPLICATION TO  
7 PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR  
8 OTHER FIREARM CAPABLE OF BEING CONCEALED  
9 UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND  
10 NO DELIVERY SHALL BE MADE TO ANY PERSON WHO  
11 HAS MADE AN APPLICATION TO PURCHASE MORE  
12 THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM  
13 CAPABLE OF BEING CONCEALED UPON THE PERSON  
14 WITHIN ANY 30-DAY PERIOD.”

15 (8) Commencing April 1, 1994, no pistol, revolver, or other  
16 firearm capable of being concealed upon the person shall be  
17 delivered unless the purchaser, transferee, or person being loaned  
18 the firearm presents to the dealer a basic firearms safety certificate.

19 (9) Commencing July 1, 1992, the licensee shall offer to  
20 provide the purchaser or transferee of a firearm, or person being  
21 loaned a firearm, with a copy of the pamphlet described in Section  
22 12080 and may add the cost of the pamphlet, if any, to the sales  
23 price of the firearm.

24 (10) The licensee shall not commit an act of collusion as  
25 defined in Section 12072.

26 (11) The licensee shall post conspicuously within the licensed  
27 premises a detailed list of each of the following:

28 (A) All charges required by governmental agencies for  
29 processing firearm transfers required by Sections 12076, 12082,  
30 and 12806.

31 (B) All fees that the licensee charges pursuant to Sections  
32 12082 and 12806.

33 (12) The licensee shall not misstate the amount of fees charged  
34 by a governmental agency pursuant to Sections 12076, 12082, and  
35 12806.

36 (13) The licensee shall report the loss or theft of any firearm  
37 that is merchandise of the licensee, any firearm that the licensee  
38 takes possession of pursuant to Section 12082, or any firearm kept  
39 at the licensee’s place of business within 48 hours of discovery to



1 the appropriate law enforcement agency in the city, county, or city  
2 and county where the licensee's business premises are located.

3 (14) In a city and county, or in the unincorporated area of a  
4 county with a population of 200,000 persons or more according to  
5 the most recent federal decennial census or within a city with a  
6 population of 50,000 persons or more according to the most recent  
7 federal decennial census, any time the licensee is not open for  
8 business, the licensee shall store all firearms kept in his or her  
9 licensed place of business using one of the following methods as  
10 to each particular firearm:

11 (A) Store the firearm in a secure facility that is a part of, or that  
12 constitutes, the licensee's business premises.

13 (B) Secure the firearm with a hardened steel rod or cable of at  
14 least one-eighth inch in diameter through the trigger guard of the  
15 firearm. The steel rod or cable shall be secured with a hardened  
16 steel lock that has a shackle. The lock and shackle shall be  
17 protected or shielded from the use of a bolt cutter and the rod or  
18 cable shall be anchored in a manner that prevents the removal of  
19 the firearm from the premises.

20 (C) Store the firearm in a locked fireproof safe or vault in the  
21 licensee's business premises.

22 (15) The licensing authority in an unincorporated area of a  
23 county with a population less than 200,000 persons according to  
24 the most recent federal decennial census or within a city with a  
25 population of less than 50,000 persons according to the most recent  
26 federal decennial census may impose the requirements specified  
27 in paragraph (14).

28 (16) Commencing January 1, 1994, the licensee shall, upon the  
29 issuance or renewal of a license, submit a copy of the same to the  
30 Department of Justice.

31 (17) The licensee shall maintain and make available for  
32 inspection during business hours to any peace officer, authorized  
33 local law enforcement employee, or Department of Justice  
34 employee designated by the Attorney General, upon the  
35 presentation of proper identification, a firearms transaction  
36 record.

37 (18) (A) On the date of receipt, the licensee shall report to the  
38 Department of Justice in a format prescribed by the department the  
39 acquisition by the licensee of the ownership of a pistol, revolver,  
40 or other firearm capable of being concealed upon the person.



1 (B) The provisions of this paragraph shall not apply to any of  
2 the following transactions:

3 (i) A transaction subject to the provisions of subdivision (n) of  
4 Section 12078.

5 (ii) The dealer acquired the firearm from a wholesaler.

6 (iii) The dealer is also licensed as a secondhand dealer pursuant  
7 to Article 4 (commencing with Section 21625) of Chapter 9 of  
8 Division 8 of the Business and Professions Code.

9 (iv) The dealer acquired the firearm from a person who is  
10 licensed as a manufacturer or importer to engage in those activities  
11 pursuant to Chapter 44 (commencing with Section 921) of Title 18  
12 of the United States Code and any regulations issued pursuant  
13 thereto.

14 (v) The dealer acquired the firearm from a person who resides  
15 outside this state who is licensed pursuant to Chapter 44  
16 (commencing with Section 921) of Title 18 of the United States  
17 Code and any regulations issued pursuant thereto.

18 (19) The licensee shall forward in a format prescribed by the  
19 Department of Justice, information as required by the department  
20 on any firearm that is not delivered within the time period set forth  
21 in Section 178.102 (c) of Title 27 of the Code of Federal  
22 Regulations.

23 (c) (1) As used in this article, “clear evidence of his or her  
24 identity and age” means either of the following:

25 (A) A valid California driver’s license.

26 (B) A valid California identification card issued by the  
27 Department of Motor Vehicles.

28 (2) As used in this article, a “basic firearms safety certificate”  
29 means a basic firearms certificate issued to the purchaser,  
30 transferee, or person being loaned the firearm by the Department  
31 of Justice pursuant to Article 8 (commencing with Section 12800)  
32 of Chapter 6.

33 (3) As used in this section, a “secure facility” means a building  
34 that meets all of the following specifications:

35 (A) All perimeter doorways shall meet one of the following:

36 (i) A windowless steel security door equipped with both a dead  
37 bolt and a doorknob lock.

38 (ii) A windowed metal door that is equipped with both a dead  
39 bolt and a doorknob lock. If the window has an opening of five  
40 inches or more measured in any direction, the window shall be



1 covered with steel bars of at least one-half inch diameter or metal  
2 grating of at least nine gauge affixed to the exterior or interior of  
3 the door.

4 (iii) A metal grate that is padlocked and affixed to the licensee's  
5 premises independent of the door and doorframe.

6 (B) All windows are covered with steel bars.

7 (C) Heating, ventilating, air-conditioning, and service  
8 openings are secured with steel bars, metal grating, or an alarm  
9 system.

10 (D) Any metal grates have spaces no larger than six inches wide  
11 measured in any direction.

12 (E) Any metal screens have spaces no larger than three inches  
13 wide measured in any direction.

14 (F) All steel bars shall be no further than six inches apart.

15 (4) As used in this section, "licensed premises," "licensed  
16 place of business," "licensee's place of business," or "licensee's  
17 business premises" means the building designated in the license.

18 (5) For purposes of paragraph (17) of subdivision (b):

19 (A) A "firearms transaction record" is a record containing the  
20 same information referred to in subdivision (a) of Section  
21 178.124, Section 178.124a, and subdivision (e) of Section  
22 178.125 of Title 27 of the Code of Federal Regulations.

23 (B) A licensee shall be in compliance with the provisions of  
24 paragraph (17) of subdivision (b) if he or she maintains and makes  
25 available for inspection during business hours to any peace officer,  
26 authorized local law enforcement employee, or Department of  
27 Justice employee designated by the Attorney General, upon the  
28 presentation of proper identification, the bound book containing  
29 the same information referred to in Section 178.124a and  
30 subdivision (e) of Section 178.125 of Title 27 of the Code of  
31 Federal Regulations and the records referred to in subdivision (a)  
32 of Section 178.124 of Title 27 of the Code of Federal Regulations.

33 (d) Upon written request from a licensee, the licensing  
34 authority may grant an exemption from compliance with the  
35 requirements of paragraph (14) of subdivision (b) if the licensee  
36 is unable to comply with those requirements because of local  
37 ordinances, covenants, lease conditions, or similar circumstances  
38 not under the control of the licensee.

39 (e) Except as otherwise provided in this subdivision, the  
40 Department of Justice shall keep a centralized list of all persons



1 licensed pursuant to subparagraphs (A) to (E), inclusive, of  
2 paragraph (1) of subdivision (a). The department may remove  
3 from this list any person who knowingly or with gross negligence  
4 violates this article. Upon removal of a dealer from this list,  
5 notification shall be provided to local law enforcement and  
6 licensing authorities in the jurisdiction where the dealer's business  
7 is located. The department shall make information about an  
8 individual dealer available, upon request, for one of the following  
9 purposes only:

10 (1) For law enforcement purposes.

11 (2) When the information is requested by a person licensed  
12 pursuant to Chapter 44 (commencing with Section 921) of Title 18  
13 of the United States Code for determining the validity of the  
14 license for firearm shipments.

15 (3) When information is requested by a person promoting,  
16 sponsoring, operating, or otherwise organizing a show or event as  
17 defined in Section 178.100 of Title 27 of the Code of Federal  
18 Regulations, or its successor, who possesses a valid certificate of  
19 eligibility issued pursuant to Section 12071.1, if that information  
20 is requested by the person to determine the eligibility of a  
21 prospective participant in a gun show or event to conduct  
22 transactions as a firearms dealer pursuant to subparagraph (B) of  
23 paragraph (1) of subdivision (b). Information provided pursuant  
24 to this paragraph shall be limited to information necessary to  
25 corroborate an individual's current license status.

26 (f) The Department of Justice may inspect dealers to ensure  
27 compliance with this article. The department may assess an annual  
28 fee, not to exceed eighty-five dollars (\$85), to cover the reasonable  
29 cost of maintaining the list described in subdivision (e), including  
30 the cost of inspections. Dealers whose place of business is in a  
31 jurisdiction that has adopted an inspection program to ensure  
32 compliance with firearms law shall be exempt from that portion of  
33 the department's fee that relates to the cost of inspections. The  
34 applicant is responsible for providing evidence to the department  
35 that the jurisdiction in which the business is located has the  
36 inspection program.

37 (g) The Department of Justice shall maintain and make  
38 available upon request information concerning the number of  
39 inspections conducted and the amount of fees collected pursuant  
40 to subdivision (f), a listing of exempted jurisdictions, as defined



1 in subdivision (f), the number of dealers removed from the  
2 centralized list defined in subdivision (e), and the number of  
3 dealers found to have violated this article with knowledge or gross  
4 negligence.

5 (h) Paragraph (14) or (15) of subdivision (b) shall not apply to  
6 a licensee organized as a nonprofit public benefit or mutual benefit  
7 corporation organized pursuant to Part 2 (commencing with  
8 Section 5110) or Part 3 (commencing with Section 7110) of  
9 Division 2 of the Corporations Code, if both of the following  
10 conditions are satisfied:

11 (1) The nonprofit public benefit or mutual benefit corporation  
12 obtained the dealer’s license solely and exclusively to assist that  
13 corporation or local chapters of that corporation in conducting  
14 auctions or similar events at which firearms are auctioned off to  
15 fund the activities of that corporation or the local chapters of the  
16 corporation.

17 (2) The firearms are not pistols, revolvers, or other firearms  
18 capable of being concealed upon the person.

19 *SEC. 7.* Section 2 of this act shall become operative only if  
20 funds are appropriated in the 2001–02 Budget Act to the  
21 Department of Justice for the purposes described therein.

