

Assembly Bill No. 2728

CHAPTER 793

An act to amend Section 12276.5 of, and to add Section 12282 to, the Penal Code, relating to firearms.

[Approved by Governor September 29, 2006. Filed with
Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2728, Klehs. Firearms.

Existing law provides a judicial procedure for declaring a firearm an assault weapon, as specified.

This bill would repeal those provisions.

Existing law authorizes the Attorney General to declare a firearm an assault weapon.

This bill would provide that authorization ends January 1, 2007.

Existing law generally regulates the possession of assault weapons and .50 BMG rifles.

This bill would provide that possession of any assault weapon or of any .50 BMG rifle in violation of specified provisions of law would be a public nuisance. The bill would authorize the Attorney General, any district attorney, or any city attorney to bring an action in superior court, in lieu of criminal prosecution, to enjoin the possession of the assault weapon or .50 BMG rifle and seek civil fines of up to \$300 for the first assault weapon or .50 BMG rifle that is a public nuisance, and up to \$100 for each additional assault weapon or .50 BMG rifle that is a public nuisance. The bill would further provide that any assault weapon or .50 BMG rifle possessed in violation of specified provisions of law would, subject to exception, be destroyed, as specified. The bill would also provide that upon conviction of any misdemeanor or felony involving an assault weapon, the assault weapon would be deemed a nuisance and disposed of as specified.

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

SECTION 1. Section 12276.5 of the Penal Code is amended to read:

12276.5. (a) The Attorney General shall prepare a description for identification purposes, including a picture or diagram, of each assault weapon listed in Section 12276, and any firearm declared to be an assault weapon pursuant to this section, and shall distribute the description to all law enforcement agencies responsible for enforcement of this chapter. Those law enforcement agencies shall make the description available to all agency personnel.

(b) (1) Until January 1, 2007, the Attorney General shall promulgate a list that specifies all firearms designated as assault weapons in Section 12276 or declared to be assault weapons pursuant to this section. The Attorney General shall file that list with the Secretary of State for publication in the California Code of Regulations. Any declaration that a specified firearm is an assault weapon shall be implemented by the Attorney General who, within 90 days, shall promulgate an amended list which shall include the specified firearm declared to be an assault weapon. The Attorney General shall file the amended list with the Secretary of State for publication in the California Code of Regulations. Any firearm declared to be an assault weapon prior to January 1, 2007, shall remain on the list filed with the Secretary of State.

(2) Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, pertaining to the adoption of rules and regulations, shall not apply to any list of assault weapons promulgated pursuant to this section.

(c) The Attorney General shall adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of this chapter.

SEC. 2. Section 12282 is added to the Penal Code, to read:

12282. (a) Except as provided in Section 12280, possession of any assault weapon, as defined in Section 12276, 12276.1, or 12276.5, or of any .50 BMG rifle, as defined in Section 12278, in violation of this chapter is a public nuisance, solely for purposes of this section and subdivision (d) of Section 12028. The Attorney General, any district attorney, or any city attorney, may, in lieu of criminal prosecution, bring a civil action or reach a civil compromise in any superior court to enjoin the possession of the assault weapon or .50 BMG rifle that is a public nuisance.

(b) Upon motion of the Attorney General, district attorney, or city attorney, a superior court may impose a civil fine not to exceed three hundred dollars (\$300) for the first assault weapon or .50 BMG rifle deemed a public nuisance pursuant to subdivision (a) and up to one hundred dollars (\$100) for each additional assault weapon or .50 BMG rifle deemed a public nuisance pursuant to subdivision (a).

(c) Any assault weapon or .50 BMG rifle deemed a public nuisance under subdivision (a) shall be destroyed in a manner so that it may no longer be used, except upon a finding by a court, or a declaration from the Department of Justice, district attorney, or city attorney stating that the preservation of the assault weapon or .50 BMG rifle is in the interest of justice.

(d) Upon conviction of any misdemeanor or felony involving the illegal possession or use of an assault weapon, the assault weapon shall be deemed a public nuisance and disposed of pursuant to subdivision (d) of Section 12028.