

AMENDED IN SENATE JUNE 17, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 9, 2008

AMENDED IN ASSEMBLY APRIL 2, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2235

Introduced by Assembly Member DeSaulnier
(~~Coauthor: Assembly Member Feuer~~ Coauthors: Assembly Members
***Feuer and Hancock*)**
(Coauthor: Senator Scott)

February 20, 2008

An act to amend Sections 12126, *12130*, and 12132 of, and to add Sections 12134 and 12135 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2235, as amended, DeSaulnier. Firearms: owner-authorized handguns.

Existing law establishes criteria for determining if a handgun is unsafe. Existing law generally requires manufacturers to submit samples of new handgun models for testing to determine if they are unsafe or may be approved for sale, as specified. Other provisions of existing law, subject to exceptions, generally make it an offense to manufacture or sell a handgun that is not safe.

This bill would provide that commencing 18 months following the Attorney General's reporting that owner-authorized handguns are available for retail sale, as specified, a handgun would be unsafe if it was not owner-authorized, as defined, and would provide an exception

to these provisions for the sale, loan, or transfer of handguns manufactured in or imported into this ~~country~~ *state* prior to that date, as specified. The bill would specify requirements that owner-authorized handguns would be required to meet in order for the Attorney General to determine that owner-authorized handguns are available for retail sale, and in order to comply with certain safety standards, as specified.

The bill would require the Attorney General, commencing July 1, 2009, and every July 1 thereafter through 2014, to report to the Governor and the Legislature regarding the progress made on the availability for retail sale of owner-authorized handguns, as specified. The bill would also require the Attorney General, upon determining that owner-authorized handguns are available for retail sale, to issue a report, within 6 months of that determination, proposing statutory changes needed to implement certain requirements related to owner-authorized handguns, as specified.

By expanding the application of provisions of law that define a criminal offense, this bill would impose a state-mandated local program.

The bill would also provide that, commencing 18 months following the Attorney General’s reporting that owner-authorized handguns are available for retail sale, as specified, any person who intentionally disables or circumvents the ~~owner-authorized handgun~~ technology of an owner-authorized handgun is guilty of a misdemeanor.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 12126 of the Penal Code is amended to
- 2 read:
- 3 12126. As used in this chapter, “unsafe handgun” means any
- 4 pistol, revolver, or other firearm capable of being concealed upon
- 5 the person, as defined in subdivision (a) of Section 12001, for
- 6 which any of the following is true:

1 (a) For a revolver:

2 (1) It does not have a safety device that, either automatically in
3 the case of a double-action firing mechanism, or by manual
4 operation in the case of a single-action firing mechanism, causes
5 the hammer to retract to a point where the firing pin does not rest
6 upon the primer of the cartridge.

7 (2) It does not meet the firing requirement for handguns pursuant
8 to Section 12127.

9 (3) It does not meet the drop safety requirement for handguns
10 pursuant to Section 12128.

11 (4) Commencing 18 months following the release of a report
12 by the Attorney General to the Legislature and the Governor
13 reporting that owner-authorized handguns are available for retail
14 sale, pursuant to Section 12134, it is not an owner-authorized
15 handgun, provided, however, that this paragraph shall not apply
16 to the sale, loan, or transfer of a revolver manufactured in or
17 imported into this state prior to that date.

18 (b) For a pistol:

19 (1) It does not have a positive manually operated safety device,
20 as determined by standards relating to imported guns promulgated
21 by the federal Bureau of Alcohol, Tobacco, and Firearms.

22 (2) It does not meet the firing requirement for handguns pursuant
23 to Section 12127.

24 (3) It does not meet the drop safety requirement for handguns
25 pursuant to Section 12128.

26 (4) Commencing January 1, 2006, for a center fire
27 semiautomatic pistol that is not already listed on the roster pursuant
28 to Section 12131, it does not have either a chamber load indicator,
29 or a magazine disconnect mechanism.

30 (5) Commencing January 1, 2007, for all center fire
31 semiautomatic pistols that are not already listed on the roster
32 pursuant to Section 12131, it does not have both a chamber load
33 indicator and if it has a detachable magazine, a magazine
34 disconnect mechanism.

35 (6) Commencing January 1, 2006, for all rimfire semiautomatic
36 pistols that are not already listed on the roster pursuant to Section
37 12131, it does not have a magazine disconnect mechanism, if it
38 has a detachable magazine.

39 (7) Commencing January 1, 2010, for all semiautomatic pistols
40 that are not already listed on the roster pursuant to Section 12131,

1 it is not designed and equipped with a microscopic array of
2 characters that identify the make, model, and serial number of the
3 pistol, etched or otherwise imprinted in two or more places on the
4 interior surface or internal working parts of the pistol, and that are
5 transferred by imprinting on each cartridge case when the firearm
6 is fired, provided that the Department of Justice certifies that the
7 technology used to create the imprint is available to more than one
8 manufacturer unencumbered by any patent restrictions. The
9 Attorney General may also approve a method of equal or greater
10 reliability and effectiveness in identifying the specific serial number
11 of a firearm from spent cartridge casings discharged by that firearm
12 than that which is set forth in this paragraph, to be thereafter
13 required as otherwise set forth by this paragraph where the Attorney
14 General certifies that this new method is also unencumbered by
15 any patent restrictions. Approval by the Attorney General shall
16 include notice of that fact via regulations adopted by the Attorney
17 General for purposes of implementing that method for purposes
18 of this paragraph. The microscopic array of characters required by
19 this section shall not be considered the name of the maker, model,
20 manufacturer's number, or other mark of identification, including
21 any distinguishing number or mark assigned by the Department
22 of Justice, within the meaning of Sections 12090 and 12094.

23 (8) Commencing 18 months following the release of a report
24 by the Attorney General to the Legislature and the Governor
25 reporting that owner-authorized handguns are available for retail
26 sale, pursuant to Section 12134, it is not an owner-authorized
27 handgun, provided, however, that this paragraph shall not apply
28 to the sale, loan, or transfer of a pistol manufactured in or imported
29 into this state prior to that date.

30 (c) In addition to complying with the provisions of subdivisions
31 (a) and (b), as applicable, owner-authorized handguns shall comply
32 with the following performance standards:

33 (1) The firearm shall not fail to recognize the authorized user,
34 and shall not falsely recognize an unauthorized user, more than
35 one time per thousand recognition attempts.

36 (2) The time from first contact to use recognition and firearm
37 enablement shall be no more than 0.5 seconds.

38 (3) The time from loss of contact with the authorized user to
39 firearm disablement shall be no more than 0.5 seconds.

1 (4) When the firearm is enabled, the “ready” condition shall be
2 indicated by a visible indicator.

3 (5) If the firearm is battery operated, the firearm shall be
4 equipped with a “low power” indicator that emits an audible signal.

5 (6) If the ~~authorized~~ user is not recognized, or if the power
6 supply fails, the firearm shall be inoperable.

7 (7) Enabling authorized user information shall be stored in the
8 firearm as permanent memory that is restored when power is
9 restored.

10 (8) The firearm shall be capable of use by more than one
11 authorized user and, if the firearm uses hand recognition
12 technology, it shall recognize either of the authorized user’s hands.

13 (d) As used in this section, a “chamber load indicator” means
14 a device that plainly indicates that a cartridge is in the firing
15 chamber. A device satisfies this definition if it is readily visible,
16 has incorporated or adjacent explanatory text or graphics, or both,
17 and is designed and intended to indicate to a reasonably foreseeable
18 adult user of the pistol, without requiring the user to refer to a
19 user’s manual or any other resource other than the pistol itself,
20 whether a cartridge is in the firing chamber.

21 (e) As used in this section, a “magazine disconnect mechanism”
22 means a mechanism that prevents a semiautomatic pistol that has
23 a detachable magazine from operating to strike the primer of
24 ammunition in the firing chamber when a detachable magazine is
25 not inserted in the semiautomatic pistol.

26 (f) As used in this section, a “semiautomatic pistol” means a
27 pistol, as defined in subdivision (a) of Section 12001, the operating
28 mode of which uses the energy of the explosive in a fixed cartridge
29 to extract a fired cartridge and chamber a fresh cartridge with each
30 single pull of the trigger.

31 (g) As used in this section, an “owner-authorized handgun”
32 means a handgun that has a permanent programmable biometric
33 or other *permanent programmable* feature as part of its original
34 manufacture that renders the handgun incapable of being fired
35 except when activated by the lawful owner or other users
36 authorized by the lawful owner, and that cannot be readily
37 deactivated. An owner-authorized handgun shall *only* be
38 programmed by a licensed dealer.

39 *SEC. 1.5. Section 12130 of the Penal Code is amended to read:*

1 12130. (a) Any pistol, revolver, or other firearm capable of
2 being concealed upon the person manufactured in this state,
3 imported into the state for sale, kept for sale, or offered or exposed
4 for sale, shall be tested within a reasonable period of time by an
5 independent laboratory certified pursuant to subdivision (b) to
6 determine whether that pistol, revolver, or other firearm capable
7 of being concealed upon the person meets or exceeds the standards
8 defined in Section 12126.

9 (b) On or before October 1, 2000, the Department of Justice
10 shall certify laboratories to verify compliance with the standards
11 defined in Section 12126. The department may charge any
12 laboratory that is seeking certification to test any pistol, revolver,
13 or other firearm capable of being concealed upon the person
14 pursuant to this chapter a fee not exceeding the costs of
15 certification.

16 (c) The certified testing laboratory shall, at the manufacturer's
17 or importer's expense, test the firearm and submit a copy of the
18 final test report directly to the Department of Justice along with a
19 prototype of the weapon to be retained by the department. The
20 department shall notify the manufacturer or importer of its receipt
21 of the final test report and the department's determination as to
22 whether the firearm tested may be sold in this state.

23 (d) (1) Commencing January 1, 2006, no center-fire
24 semiautomatic pistol may be submitted for testing pursuant to this
25 chapter if it does not have either a chamber load indicator as
26 defined in subdivision-~~(e)~~ (d) of Section 12126, or a magazine
27 disconnect mechanism as defined in subdivision-~~(d)~~ (e) of Section
28 12126 if it has a detachable magazine.

29 (2) Commencing January 1, 2007, no center-fire semiautomatic
30 pistol may be submitted for testing pursuant to this chapter if it
31 does not have both a chamber load indicator as defined in
32 subdivision-~~(e)~~ (d) of Section 12126 and a magazine disconnect
33 mechanism as defined in subdivision-~~(d)~~ (e) of Section 12126.

34 (3) Commencing January 1, 2006, no rimfire semiautomatic
35 pistol may be submitted for testing pursuant to this chapter if it
36 has a detachable magazine, and does not have a magazine
37 disconnect mechanism as defined in subdivision-~~(d)~~ (e) of Section
38 12126.

39 SEC. 2. Section 12132 of the Penal Code is amended to read:
40 12132. This chapter shall not apply to any of the following:

- 1 (a) The sale, loan, or transfer of any firearm pursuant to Section
2 12082 in order to comply with subdivision (d) of Section 12072.
- 3 (b) The sale, loan, or transfer of any firearm that is exempt from
4 the provisions of subdivision (d) of Section 12072 pursuant to any
5 applicable exemption contained in Section 12078, if the sale, loan,
6 or transfer complies with the requirements of that applicable
7 exemption to subdivision (d) of Section 12072.
- 8 (c) The sale, loan, or transfer of any firearm as described in
9 paragraph (3) of subdivision (b) of Section 12125.
- 10 (d) The delivery of a pistol, revolver, or other firearm capable
11 of being concealed upon the person to a person licensed pursuant
12 to Section 12071 for the purposes of the service or repair of that
13 firearm.
- 14 (e) The return of a pistol, revolver, or other firearm capable of
15 being concealed upon the person by a person licensed pursuant to
16 Section 12071 to its owner where that firearm was initially
17 delivered in the circumstances set forth in subdivision (a), (d), (f)
18 or (j).
- 19 (f) The delivery of a pistol, revolver, or other firearm capable
20 of being concealed upon the person to a person licensed pursuant
21 to Section 12071 for the purpose of a consignment sale or as
22 collateral for a pawnbroker loan.
- 23 (g) The sale, loan, or transfer of any pistol, revolver, or other
24 firearm capable of being concealed upon the person listed as a
25 curio or relic, as defined in Section 178.11 of the Code of Federal
26 Regulations.
- 27 (h) (1) The Legislature finds a significant public purpose in
28 exempting pistols that are designed expressly for use in Olympic
29 target shooting events. Therefore, those pistols that are sanctioned
30 by the International Olympic Committee and by USA Shooting,
31 the national governing body for international shooting competition
32 in the United States, and that are used for Olympic target shooting
33 purposes at the time that the act adding this subdivision is enacted,
34 and that fall within the definition of “unsafe handgun” pursuant
35 to paragraph (3) or (8) of subdivision (b) of Section 12126 shall
36 be exempt, as provided in paragraphs (2) and (3).
- 37 (2) This chapter shall not apply to any of the following pistols,
38 because they are consistent with the significant public purpose
39 expressed in paragraph (1):

1	MANUFACTURER	MODEL	CALIBER
2	ANSCHUTZ	FP	.22LR
3	BENELLI	MP90	.22LR
4	BENELLI	MP90	.32 S&W LONG
5	BENELLI	MP95	.22LR
6	BENELLI	MP95	.32 S&W LONG
7	DRULOV	FP	.22LR
8	GREEN	ELECTROARM	.22LR
9	HAMMERLI	100	.22LR
10	HAMMERLI	101	.22LR
11	HAMMERLI	102	.22LR
12	HAMMERLI	162	.22LR
13	HAMMERLI	280	.22LR
14	HAMMERLI	280	.32 S&W LONG
15	HAMMERLI	FP10	.22LR
16	HAMMERLI	MP33	.22LR
17	HAMMERLI	SP20	.22LR
18	HAMMERLI	SP20	.32 S&W LONG
19	MORINI	CM102E	.22LR
20	MORINI	22M	.22LR
21	MORINI	32M	.32 S&W LONG
22	MORINI	CM80	.22LR
23	PARDINI	GP	.22 SHORT
24	PARDINI	GPO	.22 SHORT
25	PARDINI	GP-SCHUMANN	.22 SHORT
26	PARDINI	HP	.32 S&W LONG
27	PARDINI	K22	.22LR
28	PARDINI	MP	.32 S&W LONG
29	PARDINI	PGP75	.22LR
30	PARDINI	SP	.22LR
31	PARDINI	SPE	.22LR
32	SAKO	FINMASTER	.22LR
33	STEYR	FP	.22LR
34	VOSTOK	IZH NO. 1	.22LR
35	VOSTOK	MU55	.22LR
36	VOSTOK	TOZ35	.22LR
37	WALTHER	FP	.22LR
38	WALTHER	GSP	.22LR
39	WALTHER	GSP	.32 S&W LONG
40	WALTHER	OSP	.22 SHORT

1 WALTHER OSP-2000 .22 SHORT

2

3 (3) The department shall create a program that is consistent with
4 the purpose stated in paragraph (1) to exempt new models of
5 competitive firearms from this chapter. The exempt competitive
6 firearms may be based on recommendations by USA Shooting
7 consistent with the regulations contained in the USA Shooting
8 Official Rules or may be based on the recommendation or rules
9 of any other organization that the department deems relevant.

10 (i) The sale, loan, or transfer of any semiautomatic pistol that
11 is to be used solely as a prop during the course of a motion picture,
12 television, or video production by an authorized participant therein
13 in the course of making that production or event or by an authorized
14 employee or agent of the entity producing that production or event.

15 (j) The delivery of a pistol, revolver, or other firearm capable
16 of being concealed upon the person to a person licensed pursuant
17 to Section 12071 where the firearm is being loaned by the licensee
18 to a consultant-evaluator.

19 (k) The delivery of a pistol, revolver, or other firearm capable
20 of being concealed upon the person by a person licensed pursuant
21 to Section 12071 where the firearm is being loaned by the licensee
22 to a consultant-evaluator.

23 (l) The return of a pistol, revolver, or other firearm capable of
24 being concealed upon the person to a person licensed pursuant to
25 Section 12071 where it was initially delivered pursuant to
26 subdivision (k).

27 SEC. 3. Section 12134 is added to the Penal Code, to read:

28 12134. (a) The Attorney General shall, commencing July 1,
29 2009, and every July 1 thereafter through 2014, submit a written
30 report to the Governor and the Legislature summarizing the current
31 availability of owner-authorized handguns, as defined in Section
32 12126. The Attorney General shall continue to submit reports until
33 he or she has reported that owner-authorized handguns are available
34 for retail sale.

35 (1)

36 (b) Each report shall state whether owner-authorized handguns
37 are available for retail sale, and if not, what progress, if any, has
38 been made in the development of that technology since the previous
39 report.

40 (2)

1 (c) Each report shall state what, if any, pressures exist within
2 the firearms industry to deliberately withhold owner-authorized
3 handguns from the market.

4 ~~(3)~~

5 (d) The Attorney General shall consult with law enforcement
6 agencies, firearms industry representatives, private technology
7 providers, the State Department of Public Health, the University
8 of California, other higher learning institutions, and other
9 appropriate parties in making reports and recommendations
10 pursuant to this section.

11 ~~(4)~~

12 (e) Each report shall explicitly state all sources consulted and
13 relied upon, including the names and affiliations of those sources,
14 and shall be made publicly accessible.

15 ~~(5)~~

16 (f) Owner-authorized handguns shall be deemed available for
17 retail sale when at least one domestic or foreign manufacturer has
18 developed and offered for sale in any state or country at least one
19 production model of an owner-authorized handgun that the
20 Attorney General has determined meets the performance standards
21 set forth in subdivision (c) of Section 12126.

22 ~~(b) Once the Attorney General has determined that~~
23 ~~owner-authorized handguns are available for retail sale, the~~
24 ~~Attorney General shall, within six months of that determination,~~
25 ~~release a report proposing statutory changes needed to implement~~
26 ~~paragraph (4) of subdivision (a) and paragraph (8) of subdivision~~
27 ~~(b) of Section 12126. That report shall specifically address the~~
28 ~~following issues:~~

29 ~~(1) Where the handgun is delivered by a person licensed~~
30 ~~pursuant to Section 12071 after an application to purchase the~~
31 ~~handgun is completed, the process by which the licensee shall~~
32 ~~program the owner-authorized handgun to recognize the lawful~~
33 ~~owner.~~

34 ~~(2) The ability of the authorized owner to loan his or her~~
35 ~~owner-authorized handgun to other persons consistent with existing~~
36 ~~state law, and the process by which that owner may do so.~~

37 ~~(3) The process by which persons licensed pursuant to Section~~
38 ~~12071 may program the owner-authorized handgun to recognize~~
39 ~~additional authorized users.~~

1 ~~(4) The process by which additional authorized users are~~
2 ~~identified as not being prohibited by Section 12021 or 12021.1 of~~
3 ~~this code or Section 8100 or 8103 of the Welfare and Institutions~~
4 ~~Code from acquiring or possessing a firearm.~~

5 ~~(5) The process by which the legal owner and additional~~
6 ~~authorized users are trained in the safe use and storage of~~
7 ~~owner-authorized handguns.~~

8 SEC. 4. Section 12135 is added to the Penal Code, to read:

9 12135. Commencing 18 months following the release of a
10 report by the Attorney General to the Legislature and the Governor
11 reporting that owner-authorized handguns are available for retail
12 sale, pursuant to Section 12134, any person who intentionally
13 disables or circumvents the *technology of an* owner-authorized
14 ~~handgun technology of an~~, *other than a licensed dealer as*
15 *necessary to program the* owner-authorized handgun, is guilty of
16 a misdemeanor.

17 SEC. 5. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.