

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 668

Introduced by Assembly Member Lieu

February 25, 2009

An act to amend Section 626.9 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 668, as amended, Lieu. Firearms: gun-free school zones.

Existing law, subject to exceptions, provides that it is an offense for any person ~~who possesses~~ *to possess* a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority. Existing law defines "school zone" for these purposes as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

This bill would extend that distance to 1,500 feet from the grounds of the public or private school.

By expanding the scope of an existing offense, 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 626.9 of the Penal Code is amended to
2 read:

3 626.9. (a) This section shall be known, and may be cited, as
4 the Gun-Free School Zone Act of 1995.

5 (b) Any person who possesses a firearm in a place that the
6 person knows, or reasonably should know, is a school zone, as
7 defined in paragraph (1) of subdivision (e), unless it is with the
8 written permission of the school district superintendent, his or her
9 designee, or equivalent school authority, shall be punished as
10 specified in subdivision (f).

11 (c) Subdivision (b) does not apply to the possession of a firearm
12 under any of the following circumstances:

13 (1) Within a place of residence or place of business or on private
14 property, if the place of residence, place of business, or private
15 property is not part of the school grounds and the possession of
16 the firearm is otherwise lawful.

17 (2) ~~When the firearm is an unloaded~~ *a lawfully possessed* pistol,
18 revolver, or other firearm capable of being concealed on the person
19 *is unloaded* and is in a locked container ~~or within the~~ *inside a*
20 *motor vehicle or unloaded and inside a* locked trunk of a motor
21 vehicle.

22 This section does not prohibit or limit the otherwise lawful
23 transportation of any other firearm, other than a pistol, revolver,
24 or other firearm capable of being concealed on the person, in
25 accordance with state law.

26 (3) When the person *lawfully* possessing the firearm reasonably
27 believes that he or she is in grave danger because of circumstances
28 forming the basis of a current restraining order issued by a court
29 against another person or persons who has or have been found to
30 pose a threat to his or her life or safety. This subdivision may not
31 apply when the circumstances involve a mutual restraining order
32 issued pursuant to Division 10 (commencing with Section 6200)
33 of the Family Code absent a factual finding of a specific threat to
34 the person's life or safety. Upon a trial for violating subdivision
35 (b), the trier of a fact shall determine whether the defendant was
36 acting out of a reasonable belief that he or she was in grave danger.

1 (4) When the person is exempt from the prohibition against
2 carrying a concealed firearm pursuant to subdivision (b), (d), (e),
3 or (h) of Section 12027.

4 (5) *Nothing in this subdivision is meant to allow an individual,*
5 *other than those specified in subdivisions (b), (d), (e), and (h) of*
6 *Section 12027, to possess a firearm on any school facility without*
7 *the written permission of the school district superintendent, his or*
8 *her designee, or equivalent school authority.*

9 (d) Except as provided in subdivision (b), it shall be unlawful
10 for any person, with reckless disregard for the safety of another,
11 to discharge, or attempt to discharge, a firearm in a school zone,
12 as defined in paragraph (1) of subdivision (e).

13 The prohibition contained in this subdivision does not apply to
14 the discharge of a firearm to the extent that the conditions of
15 paragraph (1) of subdivision (c) are satisfied.

16 (e) As used in this section, the following definitions shall apply:

17 (1) "School zone" means an area in, or on the grounds of, a
18 public or private school providing instruction in kindergarten or
19 grades 1 to 12, inclusive, or within a distance of 1,500 feet from
20 the grounds of the public or private school.

21 (2) "Firearm" has the same meaning as that term is given in
22 Section 12001.

23 (3) "Locked container" has the same meaning as that term is
24 given in subdivision (c) of Section 12026.1.

25 (4) "Concealed firearm" has the same meaning as that term is
26 given in Sections 12025 and 12026.1.

27 (5) *"School facility" means any building or property, excluding*
28 *driveways and parking lots, located on the grounds of a public or*
29 *private school providing instruction in kindergarten or grades 1*
30 *to 12, inclusive.*

31 (f) (1) Any person who violates subdivision (b) by possessing
32 a firearm in, or on the grounds of, a public or private school
33 providing instruction in kindergarten or grades 1 to 12, inclusive,
34 shall be punished by imprisonment in the state prison for two,
35 three, or five years.

36 (2) Any person who violates subdivision (b) by possessing a
37 firearm within a distance of 1,500 feet from the grounds of a public
38 or private school providing instruction in kindergarten or grades
39 1 to 12, inclusive, shall be punished as follows:

1 (A) By imprisonment in the state prison for two, three, or five
2 years, if any of the following circumstances apply:
3 (i) If the person previously has been convicted of any felony,
4 or of any crime made punishable by Chapter 1 (commencing with
5 Section 12000) of Title 2 of Part 4.
6 (ii) If the person is within a class of persons prohibited from
7 possessing or acquiring a firearm pursuant to Section 12021 or
8 12021.1 of this code or Section 8100 or 8103 of the Welfare and
9 Institutions Code.
10 (iii) If the firearm is any pistol, revolver, or other firearm capable
11 of being concealed upon the person and the offense is punished as
12 a felony pursuant to Section 12025.
13 (B) By imprisonment in a county jail for not more than one year
14 or by imprisonment in the state prison for two, three, or five years,
15 in all cases other than those specified in subparagraph (A).
16 (3) Any person who violates subdivision (d) shall be punished
17 by imprisonment in the state prison for three, five, or seven years.
18 (g) (1) Every person convicted under this section for a
19 misdemeanor violation of subdivision (b) who has been convicted
20 previously of a misdemeanor offense enumerated in Section
21 12001.6 shall be punished by imprisonment in a county jail for
22 not less than three months, or if probation is granted or if the
23 execution or imposition of sentence is suspended, it shall be a
24 condition thereof that he or she be imprisoned in a county jail for
25 not less than three months.
26 (2) Every person convicted under this section of a felony
27 violation of subdivision (b) or (d) who has been convicted
28 previously of a misdemeanor offense enumerated in Section
29 12001.6, if probation is granted or if the execution of sentence is
30 suspended, it shall be a condition thereof that he or she be
31 imprisoned in a county jail for not less than three months.
32 (3) Every person convicted under this section for a felony
33 violation of subdivision (b) or (d) who has been convicted
34 previously of any felony, or of any crime made punishable by
35 Chapter 1 (commencing with Section 12000) of Title 2 of Part 4,
36 if probation is granted or if the execution or imposition of sentence
37 is suspended, it shall be a condition thereof that he or she be
38 imprisoned in a county jail for not less than three months.
39 (4) The court shall apply the three-month minimum sentence
40 specified in this subdivision, except in unusual cases where the

1 interests of justice would best be served by granting probation or
2 suspending the execution or imposition of sentence without the
3 minimum imprisonment required in this subdivision or by granting
4 probation or suspending the execution or imposition of sentence
5 with conditions other than those set forth in this subdivision, in
6 which case the court shall specify on the record and shall enter on
7 the minutes the circumstances indicating that the interests of justice
8 would best be served by this disposition.

9 (h) Notwithstanding Section 12026, any person who brings or
10 possesses a loaded firearm upon the grounds of a campus of, or
11 buildings owned or operated for student housing, teaching,
12 research, or administration by, a public or private university or
13 college, that are contiguous or are clearly marked university
14 property, unless it is with the written permission of the university
15 or college president, his or her designee, or equivalent university
16 or college authority, shall be punished by imprisonment in the state
17 prison for two, three, or four years. Notwithstanding subdivision
18 (k), a university or college shall post a prominent notice at primary
19 entrances on noncontiguous property stating that firearms are
20 prohibited on that property pursuant to this subdivision.

21 (i) Notwithstanding Section 12026, any person who brings or
22 possesses a firearm upon the grounds of a campus of, or buildings
23 owned or operated for student housing, teaching, research, or
24 administration by, a public or private university or college, that
25 are contiguous or are clearly marked university property, unless
26 it is with the written permission of the university or college
27 president, his or her designee, or equivalent university or college
28 authority, shall be punished by imprisonment in the state prison
29 for one, two, or three years. Notwithstanding subdivision (k), a
30 university or college shall post a prominent notice at primary
31 entrances on noncontiguous property stating that firearms are
32 prohibited on that property pursuant to this subdivision.

33 (j) For purposes of this section, a firearm shall be deemed to be
34 loaded when there is an unexpended cartridge or shell, consisting
35 of a case that holds a charge of powder and a bullet or shot, in, or
36 attached in any manner to, the firearm, including, but not limited
37 to, in the firing chamber, magazine, or clip thereof attached to the
38 firearm. A muzzle-loader firearm shall be deemed to be loaded
39 when it is capped or primed and has a powder charge and ball or
40 shot in the barrel or cylinder.

1 (k) This section does not require that notice be posted regarding
2 the proscribed conduct.

3 (l) This section does not apply to a duly appointed peace officer
4 as defined in Chapter 4.5 (commencing with Section 830) of Title
5 3 of Part 2, a full-time paid peace officer of another state or the
6 federal government who is carrying out official duties while in
7 California, any person summoned by any of these officers to assist
8 in making arrests or preserving the peace while he or she is actually
9 engaged in assisting the officer, a member of the military forces
10 of this state or of the United States who is engaged in the
11 performance of his or her duties, a person holding a valid license
12 to carry the firearm pursuant to Article 3 (commencing with Section
13 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle
14 guard, engaged in the performance of his or her duties, as defined
15 in subdivision (e) of Section 7521 of the Business and Professions
16 Code.

17 (m) This section does not apply to a security guard authorized
18 to carry a loaded firearm pursuant to Section 12031 *in the*
19 *performance of his or her duties*.

20 (n) This section does not apply to an existing shooting range at
21 a public or private school or university or college campus.

22 (o) This section does not apply to an honorably retired peace
23 officer authorized to carry a concealed or loaded firearm pursuant
24 to subdivision (a) or (i) of Section 12027 or paragraph (1) or (8)
25 of subdivision (b) of Section 12031.

26 SEC. 2. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

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