

ASSEMBLY BILL

No. 1286

Introduced by Assembly Member Huber

February 27, 2009

An act to amend Section 12072 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1286, as introduced, Huber. Firearms: purchasing restrictions.

Existing law provides that no person shall make an application to purchase more than one handgun within any 30-day period. Existing law also exempts various entities from this restriction.

This bill would add to the list of exempted entities, community colleges that are certified by the Commission on Peace Officer Standards and Training to present the law enforcement academy basic course or other commission certified law enforcement training.

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

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

- 1 SECTION 1. Section 12072 of the Penal Code is amended to
- 2 read:
- 3 12072. (a) (1) No person, corporation, or firm shall knowingly
- 4 supply, deliver, sell, or give possession or control of a firearm to
- 5 any person within any of the classes prohibited by Section 12021
- 6 or 12021.1.
- 7 (2) No person, corporation, or dealer shall sell, supply, deliver,
- 8 or give possession or control of a firearm to any person whom he

1 or she has cause to believe to be within any of the classes
2 prohibited by Section 12021 or 12021.1 of this code or Section
3 8100 or 8103 of the Welfare and Institutions Code.

4 (3) (A) No person, corporation, or firm shall sell, loan, or
5 transfer a firearm to a minor, nor sell a handgun to an individual
6 under 21 years of age.

7 (B) Subparagraph (A) shall not apply to or affect those
8 circumstances set forth in subdivision (p) of Section 12078.

9 (4) No person, corporation, or dealer shall sell, loan, or transfer
10 a firearm to any person whom he or she knows or has cause to
11 believe is not the actual purchaser or transferee of the firearm, or
12 to any person who is not the person actually being loaned the
13 firearm, if the person, corporation, or dealer has either of the
14 following:

15 (A) Knowledge that the firearm is to be subsequently loaned,
16 sold, or transferred to avoid the provisions of subdivision (c) or
17 (d).

18 (B) Knowledge that the firearm is to be subsequently loaned,
19 sold, or transferred to avoid the requirements of any exemption to
20 the provisions of subdivision (c) or (d).

21 (5) No person, corporation, or dealer shall acquire a firearm for
22 the purpose of selling, transferring, or loaning the firearm, if the
23 person, corporation, or dealer has either of the following:

24 (A) In the case of a dealer, intent to violate subdivision (b) or
25 (c).

26 (B) In any other case, intent to avoid either of the following:

27 (i) The provisions of subdivision (d).

28 (ii) The requirements of any exemption to the provisions of
29 subdivision (d).

30 (6) The dealer shall comply with the provisions of paragraph
31 (18) of subdivision (b) of Section 12071.

32 (7) The dealer shall comply with the provisions of paragraph
33 (19) of subdivision (b) of Section 12071.

34 (8) No person shall sell or otherwise transfer his or her
35 ownership in a pistol, revolver, or other firearm capable of being
36 concealed upon the person unless the firearm bears either:

37 (A) The name of the manufacturer, the manufacturer's make or
38 model, and a manufacturer's serial number assigned to that firearm.

39 (B) The identification number or mark assigned to the firearm
40 by the Department of Justice pursuant to Section 12092.

1 (9) (A) No person shall make an application to purchase more
2 than one pistol, revolver, or other firearm capable of being
3 concealed upon the person within any 30-day period.

4 (B) Subparagraph (A) shall not apply to any of the following:

5 (i) Any law enforcement agency.

6 (ii) Any agency duly authorized to perform law enforcement
7 duties.

8 (iii) Any state or local correctional facility.

9 (iv) Any private security company licensed to do business in
10 California.

11 (v) Any person who is properly identified as a full-time paid
12 peace officer, as defined in Chapter 4.5 (commencing with Section
13 830) of Title 3 of Part 2, and who is authorized to, and does carry
14 a firearm during the course and scope of his or her employment
15 as a peace officer.

16 (vi) Any motion picture, television, or video production
17 company or entertainment or theatrical company whose production
18 by its nature involves the use of a firearm.

19 (vii) Any person who may, pursuant to Section 12078, claim
20 an exemption from the waiting period set forth in subdivision (c)
21 of this section.

22 (viii) Any transaction conducted through a licensed firearms
23 dealer pursuant to Section 12082.

24 (ix) Any person who is licensed as a collector pursuant to
25 Chapter 44 (commencing with Section 921) of Title 18 of the
26 United States Code and the regulations issued pursuant thereto
27 and who has a current certificate of eligibility issued to him or her
28 by the Department of Justice pursuant to Section 12071.

29 (x) The exchange of a pistol, revolver, or other firearm capable
30 of being concealed upon the person where the dealer purchased
31 that firearm from the person seeking the exchange within the
32 30-day period immediately preceding the date of exchange or
33 replacement.

34 (xi) The replacement of a pistol, revolver, or other firearm
35 capable of being concealed upon the person when the person's
36 pistol, revolver, or other firearm capable of being concealed upon
37 the person was lost or stolen, and the person reported that firearm
38 lost or stolen prior to the completion of the application to purchase
39 to any local law enforcement agency of the city, county, or city
40 and county in which he or she resides.

1 (xii) The return of any pistol, revolver, or other firearm capable
2 of being concealed upon the person to its owner.

3 (xiii) *Community colleges that are certified by the Commission*
4 *on Peace Officer Standards and Training to present the law*
5 *enforcement academy basic course or other commission certified*
6 *law enforcement training.*

7 (b) No person licensed under Section 12071 shall supply, sell,
8 deliver, or give possession or control of a pistol, revolver, or
9 firearm capable of being concealed upon the person to any person
10 under the age of 21 years or any other firearm to a person under
11 the age of 18 years.

12 (c) No dealer, whether or not acting pursuant to Section 12082,
13 shall deliver a firearm to a person, as follows:

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

20 (2) Unless unloaded and securely wrapped or unloaded and in
21 a locked container.

22 (3) Unless the purchaser, transferee, or person being loaned the
23 firearm presents clear evidence of his or her identity and age, as
24 defined in Section 12071, to the dealer.

25 (4) Whenever the dealer is notified by the Department of Justice
26 that the person is prohibited by state or federal law from possessing,
27 receiving, owning, or purchasing a firearm.

28 (5) (A) Commencing April 1, 1994, and until January 1, 2003,
29 no pistol, revolver, or other firearm capable of being concealed
30 upon the person shall be delivered unless the purchaser, transferee,
31 or person being loaned the firearm presents to the dealer a basic
32 firearms safety certificate.

33 (B) Commencing January 1, 2003, no handgun shall be delivered
34 unless the purchaser, transferee, or person being loaned the
35 handgun presents a handgun safety certificate to the dealer.

36 (6) No pistol, revolver, or other firearm capable of being
37 concealed upon the person shall be delivered whenever the dealer
38 is notified by the Department of Justice that within the preceding
39 30-day period the purchaser has made another application to
40 purchase a pistol, revolver, or other firearm capable of being

1 concealed upon the person and that the previous application to
2 purchase involved none of the entities specified in subparagraph
3 (B) of paragraph (9) of subdivision (a).

4 (d) Where neither party to the transaction holds a dealer's license
5 issued pursuant to Section 12071, the parties to the transaction
6 shall complete the sale, loan, or transfer of that firearm through a
7 licensed firearms dealer pursuant to Section 12082.

8 (e) No person may commit an act of collusion relating to Article
9 8 (commencing with Section 12800) of Chapter 6. For purposes
10 of this section and Section 12071, collusion may be proven by any
11 one of the following factors:

12 (1) Answering a test applicant's questions during an objective
13 test relating to firearms safety.

14 (2) Knowingly grading the examination falsely.

15 (3) Providing an advance copy of the test to an applicant.

16 (4) Taking or allowing another person to take the basic firearms
17 safety course for one who is the applicant for a basic firearms
18 safety certificate or a handgun safety certificate.

19 (5) Allowing another to take the objective test for the applicant,
20 purchaser, or transferee.

21 (6) Using or allowing another to use one's identification, proof
22 of residency, or thumbprint.

23 (7) Allowing others to give unauthorized assistance during the
24 examination.

25 (8) Reference to unauthorized materials during the examination
26 and cheating by the applicant.

27 (9) Providing originals or photocopies of the objective test, or
28 any version thereof, to any person other than as authorized by the
29 department.

30 (f) (1) (A) Commencing July 1, 2008, a person who is licensed
31 pursuant to Chapter 44 (commencing with Section 921) of Title
32 18 of the United States Code may not deliver, sell, or transfer a
33 firearm to a person in California who is licensed pursuant to
34 Chapter 44 (commencing with Section 921) of Title 18 of the
35 United States Code unless, prior to delivery, the person intending
36 to deliver, sell, or transfer the firearm obtains a verification number
37 via the Internet for the intended delivery, sale, or transfer, from
38 the department. If Internet service is unavailable to either the
39 department or the licensee due to a technical or other malfunction,
40 or a federal firearms licensee who is located outside of California

1 does not possess a computer or have Internet access, alternate
2 means of communication, including facsimile or telephone, shall
3 be made available for a licensee to obtain a verification number
4 in order to comply with this section. This subdivision shall not
5 apply to the delivery, sale, or transfer of a short-barreled rifle, or
6 short-barreled shotgun, as defined in Section 12020, or to a
7 machinegun as defined in Section 12200, or to an assault weapon
8 as defined in Sections 12276, 12276.1, and 12276.5.

9 (B) For every identification number request received pursuant
10 to this section, the department shall determine whether the intended
11 recipient is on the centralized list of firearms dealers pursuant to
12 this section, or the centralized list of exempted federal firearms
13 licensees pursuant to subdivision (a) of Section 12083, or the
14 centralized list of firearms manufacturers pursuant to subdivision
15 (f) of Section 12086.

16 (C) If the department finds that the intended recipient is on one
17 of these lists, the department shall issue to the inquiring party, a
18 unique identification number for the intended delivery, sale, or
19 transfer. In addition to the unique verification number, the
20 department may provide to the inquiring party information
21 necessary for determining the eligibility of the intended recipient
22 to receive the firearm. The person intending to deliver, sell, or
23 transfer the firearm shall provide the unique verification number
24 to the recipient along with the firearm upon delivery, in a manner
25 to be determined by the department.

26 (D) If the department finds that the intended recipient is not on
27 one of these lists, the department shall notify the inquiring party
28 that the intended recipient is ineligible to receive the firearm.

29 (E) The department shall prescribe the manner in which the
30 verification numbers may be requested via the Internet, or by
31 alternate means of communication, such as by facsimile or
32 telephone, including all required enrollment information and
33 procedures.

34 (2) (A) On or after January 1, 1998, within 60 days of bringing
35 a pistol, revolver, or other firearm capable of being concealed upon
36 the person into this state, a personal handgun importer shall do
37 one of the following:

38 (i) Forward by prepaid mail or deliver in person to the
39 Department of Justice, a report prescribed by the department

1 including information concerning that individual and a description
2 of the firearm in question.

3 (ii) Sell or transfer the firearm in accordance with the provisions
4 of subdivision (d) or in accordance with the provisions of an
5 exemption from subdivision (d).

6 (iii) Sell or transfer the firearm to a dealer licensed pursuant to
7 Section 12071.

8 (iv) Sell or transfer the firearm to a sheriff or police department.

9 (B) If the personal handgun importer sells or transfers the pistol,
10 revolver, or other firearm capable of being concealed upon the
11 person pursuant to subdivision (d) of Section 12072 and the sale
12 or transfer cannot be completed by the dealer to the purchaser or
13 transferee, and the firearm can be returned to the personal handgun
14 importer, the personal handgun importer shall have complied with
15 the provisions of this paragraph.

16 (C) The provisions of this paragraph are cumulative and shall
17 not be construed as restricting the application of any other law.
18 However, an act or omission punishable in different ways by this
19 section and different provisions of the Penal Code shall not be
20 punished under more than one provision.

21 (D) (i) On and after January 1, 1998, the department shall
22 conduct a public education and notification program regarding this
23 paragraph to ensure a high degree of publicity of the provisions
24 of this paragraph.

25 (ii) As part of the public education and notification program
26 described in this subparagraph, the department shall do all of the
27 following:

28 (I) Work in conjunction with the Department of Motor Vehicles
29 to ensure that any person who is subject to this paragraph is advised
30 of the provisions of this paragraph, and provided with blank copies
31 of the report described in clause (i) of subparagraph (A) at the time
32 that person applies for a California driver's license or registers his
33 or her motor vehicle in accordance with the Vehicle Code.

34 (II) Make the reports referred to in clause (i) of subparagraph
35 (A) available to dealers licensed pursuant to Section 12071.

36 (III) Make the reports referred to in clause (i) of subparagraph
37 (A) available to law enforcement agencies.

38 (IV) Make persons subject to the provisions of this paragraph
39 aware of the fact that reports referred to in clause (i) of
40 subparagraph (A) may be completed at either the licensed premises

1 of dealers licensed pursuant to Section 12071 or at law enforcement
2 agencies, that it is advisable to do so for the sake of accuracy and
3 completeness of the reports, that prior to transporting a pistol,
4 revolver, or other firearm capable of being concealed upon the
5 person to a law enforcement agency in order to comply with
6 subparagraph (A), the person should give prior notice to the law
7 enforcement agency that he or she is doing so, and that in any
8 event, the pistol, revolver, or other firearm capable of being
9 concealed upon the person should be transported unloaded and in
10 a locked container.

11 (iii) Any costs incurred by the department to implement this
12 paragraph shall be absorbed by the department within its existing
13 budget and the fees in the Dealers' Record of Sale Special Account
14 allocated for implementation of this subparagraph pursuant to
15 Section 12076.

16 (3) Where a person who is licensed as a collector pursuant to
17 Chapter 44 (commencing with Section 921) of Title 18 of the
18 United States Code and the regulations issued pursuant thereto,
19 whose licensed premises are within this state, acquires a pistol,
20 revolver, or other firearm capable of being concealed upon the
21 person that is a curio or relic, as defined in Section 478.11 of Title
22 27 of the Code of Federal Regulations, outside of this state, takes
23 actual possession of that firearm outside of this state pursuant to
24 the provisions of subsection (j) of Section 923 of Title 18 of the
25 United States Code, as amended by Public Law 104-208, and
26 transports that firearm into this state, within five days of that
27 licensed collector transporting that firearm into this state, he or
28 she shall report to the department in a format prescribed by the
29 department his or her acquisition of that firearm.

30 (4) (A) It is the intent of the Legislature that a violation of
31 paragraph (2) or (3) shall not constitute a "continuing offense" and
32 the statute of limitations for commencing a prosecution for a
33 violation of paragraph (2) or (3) commences on the date that the
34 applicable grace period specified in paragraph (2) or (3) expires.

35 (B) Paragraphs (2) and (3) shall not apply to a person who
36 reports his or her ownership of a pistol, revolver, or other firearm
37 capable of being concealed upon the person after the applicable
38 grace period specified in paragraph (2) or (3) expires if evidence
39 of that violation arises only as the result of the person submitting
40 the report described in paragraph (2) or (3).

1 (g) (1) Except as provided in paragraph (2), (3), or (5), a
2 violation of this section is a misdemeanor.

3 (2) If any of the following circumstances apply, a violation of
4 this section is punishable by imprisonment in the state prison for
5 two, three, or four years.

6 (A) If the violation is of paragraph (1) of subdivision (a).

7 (B) If the defendant has a prior conviction of violating the
8 provisions, other than paragraph (9) of subdivision (a), of this
9 section or former Section 12100 of this code or Section 8101 of
10 the Welfare and Institutions Code.

11 (C) If the defendant has a prior conviction of violating any
12 offense specified in subdivision (b) of Section 12021.1 or of a
13 violation of Section 12020, 12220, or 12520, or of former Section
14 12560.

15 (D) If the defendant is in a prohibited class described in Section
16 12021 or 12021.1 of this code or Section 8100 or 8103 of the
17 Welfare and Institutions Code.

18 (E) A violation of this section by a person who actively
19 participates in a “criminal street gang” as defined in Section 186.22.

20 (F) A violation of subdivision (b) involving the delivery of any
21 firearm to a person who the dealer knows, or should know, is a
22 minor.

23 (3) If any of the following circumstances apply, a violation of
24 this section shall be punished by imprisonment in a county jail not
25 exceeding one year or in the state prison, or by a fine not to exceed
26 one thousand dollars (\$1,000), or by both that fine and
27 imprisonment.

28 (A) A violation of paragraph (2), (4), or (5) of subdivision (a).

29 (B) A violation of paragraph (3) of subdivision (a) involving
30 the sale, loan, or transfer of a pistol, revolver, or other firearm
31 capable of being concealed upon the person to a minor.

32 (C) A violation of subdivision (b) involving the delivery of a
33 pistol, revolver, or other firearm capable of being concealed upon
34 the person.

35 (D) A violation of paragraph (1), (3), (4), (5), or (6) of
36 subdivision (c) involving a pistol, revolver, or other firearm capable
37 of being concealed upon the person.

38 (E) A violation of subdivision (d) involving a pistol, revolver,
39 or other firearm capable of being concealed upon the person.

40 (F) A violation of subdivision (e).

1 (4) If both of the following circumstances apply, an additional
2 term of imprisonment in the state prison for one, two, or three
3 years shall be imposed in addition and consecutive to the sentence
4 prescribed.

5 (A) A violation of paragraph (2) of subdivision (a) or subdivision
6 (b).

7 (B) The firearm transferred in violation of paragraph (2) of
8 subdivision (a) or subdivision (b) is used in the subsequent
9 commission of a felony for which a conviction is obtained and the
10 prescribed sentence is imposed.

11 (5) (A) A first violation of paragraph (9) of subdivision (a) is
12 an infraction punishable by a fine of fifty dollars (\$50).

13 (B) A second violation of paragraph (9) of subdivision (a) is an
14 infraction punishable by a fine of one hundred dollars (\$100).

15 (C) A third or subsequent violation of paragraph (9) of
16 subdivision (a) is a misdemeanor.

17 (D) For purposes of this paragraph each application to purchase
18 a pistol, revolver, or other firearm capable of being concealed upon
19 the person in violation of paragraph (9) of subdivision (a) shall be
20 deemed a separate offense.