

Introduced by Senator HarmanJanuary 12, 2010

An act to amend Section 12370 of the Penal Code, relating to body armor.

LEGISLATIVE COUNSEL'S DIGEST

SB 877, as introduced, Harman. Body armor.

Existing law provides that any person who has been convicted of a violent felony who purchases, owns, or possesses body armor, as defined in the California Code of Regulations, except as authorized, is guilty of a felony, punishable by imprisonment in a state prison for 16 months, or 2 or 3 years. However, the court, in *People v. Saleem* (Cal.App.2nd Dist., Dec. 17, 2009, B204646), held that this provision is unconstitutionally vague in violation of due process.

This bill would change the definition of body armor for purposes of this provision to mean any bullet-resistant material intended to provide ballistic and trauma protection for the wearer.

By expanding the scope of an existing 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 12370 of the Penal Code is amended to
2 read:

3 12370. (a) Any person who has been convicted of a violent
4 felony, as defined in subdivision (c) of Section 667.5, under the
5 laws of the United States, the State of California, or any other state,
6 government, or country, who purchases, owns, or possesses body
7 armor, as defined by Section 942 of Title 11 of the California Code
8 of Regulations in subdivision (f), except as authorized under
9 subdivision (b), is guilty of a felony, punishable by imprisonment
10 in a state prison for 16 months, or two or three years.

11 (b) Any person whose employment, livelihood, or safety is
12 dependent on the ability to legally possess and use body armor,
13 who is subject to the prohibition imposed by subdivision (a) due
14 to a prior violent felony conviction, may file a petition with the
15 chief of police or county sheriff of the jurisdiction in which he or
16 she seeks to possess and use the body armor for an exception to
17 this prohibition. The chief of police or sheriff may reduce or
18 eliminate the prohibition, impose conditions on reduction or
19 elimination of the prohibition, or otherwise grant relief from the
20 prohibition as he or she deems appropriate, based on the following:

21 (1) A finding that the petitioner is likely to use body armor in
22 a safe and lawful manner.

23 (2) A finding that the petitioner has a reasonable need for this
24 type of protection under the circumstances.

25 In making its decision, the chief of police or sheriff shall consider
26 the petitioner's continued employment, the interests of justice, any
27 relevant evidence, and the totality of the circumstances. It is the
28 intent of the Legislature that law enforcement officials exercise
29 broad discretion in fashioning appropriate relief under this
30 paragraph in cases in which relief is warranted. However, this
31 paragraph may not be construed to require law enforcement
32 officials to grant relief to any particular petitioner. Relief from this
33 prohibition does not relieve any other person or entity from any
34 liability that might otherwise be imposed.

35 (c) The chief of police or sheriff shall require, as a condition of
36 granting an exception under subdivision (b), that the petitioner
37 agree to maintain on his or her person a certified copy of the law

1 enforcement official’s permission to possess and use body armor,
2 including any conditions or limitations.

3 (d) Law enforcement officials who enforce the prohibition
4 specified in subdivision (a) against a person who has been granted
5 relief pursuant to subdivision (b), 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 certified
8 copy of the permission granting the person relief from the
9 prohibition, as required by subdivision (c). This immunity from
10 liability does not relieve any person or entity from any other
11 liability that might otherwise be imposed.

12 (e) For purposes of this section only, “violent felony” refers to
13 the specific crimes listed in subdivision (c) of Section 667.5, and
14 to crimes defined under the applicable laws of the United States
15 or any other state, government, or country that are reasonably
16 equivalent to the crimes listed in subdivision (c) of Section 667.5.

17 (f) *For purposes of this section, “body armor” means any*
18 *bullet-resistant material intended to provide ballistic and trauma*
19 *protection for the wearer.*

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