

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1366

Introduced by Senator DeSaulnier

February 24, 2012

An act to amend Sections 16520, 26835, and 27535 of, and to add Division 4.5 (commencing with Section 25250) to Title 4 of Part 6 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1366, as amended, DeSaulnier. Firearms: lost or stolen: reports.

(1) Existing law requires each sheriff or police chief executive to submit descriptions of serialized property, or nonserialized property that has been uniquely inscribed, which has been reported stolen, lost, or found directly into the appropriate Department of Justice automated property system for firearms, stolen bicycles, stolen vehicles, or other property. Existing law requires that information about a firearm entered into the automated system for firearms remain in the system until the reported firearm has been found. Existing law requires the Department of Justice to implement an electronic system to receive comprehensive tracing information from each local law enforcement agency and to forward the information to the National Tracing Center.

This bill would require every person, with exceptions, to report the theft or loss of a firearm he or she owns or ~~possess~~ possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within 48 hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, and requires every person who has reported a firearm lost or stolen to notify the local law enforcement agency within 48 hours if the firearm is subsequently recovered. The bill would make a violation of these provisions an

infraction punishable by a fine not to exceed \$100 for a first offense, and a misdemeanor, punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not to exceed \$1,000, or both that fine and imprisonment, for a subsequent offense. The bill would make it a misdemeanor for any person to make a report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. By creating new crimes, this bill would impose a state-mandated local program.

~~The bill would provide that everyone who complies with the above provisions by reporting the loss or theft of a firearm shall be immune from civil liability for the illicit use or possession of the firearm occurring after the theft or loss, provided the person was not negligent with respect to the theft or loss of the firearm.~~

The bill would require every sheriff or police chief to submit a description of each firearm that has been reported lost or stolen directly to the Department of Justice automated property system for firearms. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

The bill would also require that ~~person's~~ *persons* licensed to sell firearms post a warning within the licensed premises in block letters stating the requirement that a lost or stolen firearm be reported to a local law enforcement agency, as specified.

(2) Existing law prohibits a person from making an application to purchase more than one handgun within any 30-day period. Existing law makes an exception for the replacement of a handgun when the person's handgun was lost or stolen and the person reported the firearm lost or stolen prior to the completion of the application to purchase.

This bill would instead make the exception for the replacement of a lost or stolen handgun applicable when the person has reported the handgun lost or stolen pursuant to the provisions of this bill.

(3) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 16520 of the Penal Code is amended to
- 2 read:
- 3 16520. (a) As used in this part, “firearm” means any device,
- 4 designed to be used as a weapon, from which is expelled through
- 5 a barrel, a projectile by the force of any explosion or other form
- 6 of combustion.
- 7 (b) As used in the following provisions, “firearm” includes the
- 8 frame or receiver of the weapon:
- 9 (1) Section 16550.
- 10 (2) Section 16730.
- 11 (3) Section 16960.
- 12 (4) Section 16990.
- 13 (5) Section 17070.
- 14 (6) Section 17310.
- 15 (7) Sections 25250 to 25256, inclusive.
- 16 (8) Sections 26500 to 26588, inclusive.
- 17 (9) Sections 26600 to 27140, inclusive.
- 18 (10) Sections 27400 to 28000, inclusive.
- 19 (11) Section 28100.
- 20 (12) Sections 28400 to 28415, inclusive.
- 21 (13) Sections 29010 to 29150, inclusive.
- 22 (14) Sections 29610 to 29750, inclusive.
- 23 (15) Sections 29800 to 29905, inclusive.
- 24 (16) Sections 30150 to 30165, inclusive.
- 25 (17) Section 31615.
- 26 (18) Sections 31705 to 31830, inclusive.
- 27 (19) Sections 34355 to 34370, inclusive.
- 28 (20) Sections 8100, 8101, and 8103 of the Welfare and
- 29 Institutions Code.
- 30 (c) As used in the following provisions, “firearm” also includes
- 31 any rocket, rocket propelled projectile launcher, or similar device
- 32 containing any explosive or incendiary material whether or not
- 33 the device is designed for emergency or distress signaling purposes:
- 34 (1) Section 16750.
- 35 (2) Subdivision (b) of Section 16840.

- 1 (3) Section 25400.
- 2 (4) Sections 25850 to 26025, inclusive.
- 3 (5) Subdivisions (a), (b), and (c) of Section 26030.
- 4 (6) Sections 26035 to 26055, inclusive.
- 5 (d) As used in the following provisions, “firearm” does not
- 6 include an unloaded antique firearm:
- 7 (1) Subdivisions (a) and (c) of Section 16730.
- 8 (2) Section 16550.
- 9 (3) Section 16960.
- 10 (4) Section 17310.
- 11 (5) *Sections 25250 to 25256, inclusive.*
- 12 ~~(5)–~~
- 13 (6) Chapter 6 (commencing with Section 26350) of Division 5
- 14 of Title 4.
- 15 ~~(6)–~~
- 16 (7) Sections 26500 to 26588, inclusive.
- 17 ~~(7)–~~
- 18 (8) Sections 26700 to 26915, inclusive.
- 19 ~~(8)–~~
- 20 (9) Section 27510.
- 21 ~~(9)–~~
- 22 (10) Section 27530.
- 23 ~~(10)–~~
- 24 (11) Section 27540.
- 25 ~~(11)–~~
- 26 (12) Section 27545.
- 27 ~~(12)–~~
- 28 (13) Sections 27555 to 27570, inclusive.
- 29 ~~(13)–~~
- 30 (14) Sections 29010 to 29150, inclusive.
- 31 (e) As used in Sections 34005 and 34010, “firearm” does not
- 32 include a destructive device.
- 33 (f) As used in Sections 17280 and 24680, “firearm” has the
- 34 same meaning as in Section 922 of Title 18 of the United States
- 35 Code.
- 36 (g) As used in Sections 29010 to 29150, inclusive, “firearm”
- 37 includes the unfinished frame or receiver of a weapon that can be
- 38 readily converted to the functional condition of a finished frame
- 39 or receiver.

SEC. 2. Division 4.5 (commencing with Section 25250) is added to Title 4 of Part 6 of the Penal Code, to read:

DIVISION 4.5. LOST OR STOLEN FIREARMS

25250. (a) Commencing January 1, 2013, every person shall report the theft or loss of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within 48 hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.

(b) Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within 48 hours if the firearm is subsequently recovered by the person.

25251. Section 25250 shall not apply to the following:

(a) Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties *if he or she reports the loss or theft to his or her employing agency.*

(b) Any United States Marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.

~~(c) Any firearms dealer or manufacturer licensed under federal and state law while engaged in the course and scope of their activities as licensees.~~

(c) Any person who is licensed, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and who reports the theft or loss in accordance with Section 923(g)(6) of Title 18 of the United States Code, or the successor provision thereto, and applicable regulations issued thereto.

(d) Any person whose firearm was lost or stolen prior to January 1, 2013.

25252. Pursuant to Section 11108, every sheriff or police chief shall submit a description of each firearm which has been reported lost or stolen directly into the Department of Justice automated property system for firearms.

25253. (a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100).

(b) Every person who violates Section 25250 is, for a second or subsequent violation, guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

~~25254. Every person who complies with Section 25250 shall be immune from civil liability for the illicit use or possession of the firearm occurring after the theft or loss. This section shall not apply if the person was negligent with respect to the theft or loss of the firearm, and shall not create any immunity from civil liability under Section 1714.3 of the Civil Code.~~

25255. Every person reporting a lost or stolen firearm pursuant to Section 25250 shall report the make, model, and serial number of the firearm, if known by the person.

25256. Commencing January 1, 2013, no person shall report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. A violation of this section shall be a misdemeanor.

SEC. 3. Section 26835 of the Penal Code is amended to read:

26835. A licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(a) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(b) "IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH

1 A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY
2 FUNCTIONING.”

3 (c) “IF YOU KEEP ANY FIREARM WITHIN ANY
4 PREMISES UNDER YOUR CUSTODY OR CONTROL, AND
5 A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO
6 THE FIREARM, AND CARRIES IT OFF-PREMISES TO A
7 SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE
8 GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP
9 TO FIVE THOUSAND DOLLARS (\$5,000), UNLESS YOU
10 STORED THE FIREARM IN A LOCKED CONTAINER, OR
11 LOCKED THE FIREARM WITH A LOCKING DEVICE.”

12 (d) “DISCHARGING FIREARMS IN POORLY VENTILATED
13 AREAS, CLEANING FIREARMS, OR HANDLING
14 AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A
15 SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS,
16 REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL
17 INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES.
18 WASH HANDS THOROUGHLY AFTER EXPOSURE.”

19 (e) “FEDERAL REGULATIONS PROVIDE THAT IF YOU
20 DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM
21 THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30
22 DAYS AFTER YOU COMPLETE THE INITIAL
23 BACKGROUND CHECK PAPERWORK, THEN YOU HAVE
24 TO GO THROUGH THE BACKGROUND CHECK PROCESS
25 A SECOND TIME IN ORDER TO TAKE PHYSICAL
26 POSSESSION OF THAT FIREARM.”

27 (f) “NO PERSON SHALL MAKE AN APPLICATION TO
28 PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR
29 OTHER FIREARM CAPABLE OF BEING CONCEALED UPON
30 THE PERSON WITHIN ANY 30-DAY PERIOD AND NO
31 DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS
32 MADE AN APPLICATION TO PURCHASE MORE THAN ONE
33 PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF
34 BEING CONCEALED UPON THE PERSON WITHIN ANY
35 30-DAY PERIOD.”

36 (g) “IF A FIREARM YOU OWN OR POSSESS IS LOST OR
37 STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A
38 LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS
39 OR THEFT OCCURRED WITHIN 48 HOURS OF THE TIME
40 YOU KNEW OR REASONABLY SHOULD HAVE KNOWN

1 THAT THE FIREARM HAD BEEN LOST OR ~~STOLEN.~~
2 ~~STOLEN.~~"

3

4 SEC. 4. Section 27535 of the Penal Code is amended to read:

5 27535. (a) No person shall make an application to purchase
6 more than one handgun within any 30-day period.

7 (b) Subdivision (a) shall not apply to any of the following:

8 (1) Any law enforcement agency.

9 (2) Any agency duly authorized to perform law enforcement
10 duties.

11 (3) Any state or local correctional facility.

12 (4) Any private security company licensed to do business in
13 California.

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

19 (6) Any motion picture, television, or video production company
20 or entertainment or theatrical company whose production by its
21 nature involves the use of a firearm.

22 (7) Any person who may, pursuant to Article 2 (commencing
23 with Section 27600), Article 3 (commencing with Section 27650),
24 or Article 4 (commencing with Section 27700), claim an exemption
25 from the waiting period set forth in Section 27540.

26 (8) Any transaction conducted through a licensed firearms dealer
27 pursuant to Chapter 5 (commencing with Section 28050).

28 (9) Any person who is licensed as a collector pursuant to Chapter
29 44 (commencing with Section 921) of Title 18 of the United States
30 Code and the regulations issued pursuant thereto, and has a current
31 certificate of eligibility issued by the Department of Justice
32 pursuant to Article 1 (commencing with Section 26700) of Chapter
33 2.

34 (10) The exchange of a handgun where the dealer purchased
35 that firearm from the person seeking the exchange within the
36 30-day period immediately preceding the date of exchange or
37 replacement.

38 (11) The replacement of a handgun when the person's handgun
39 was lost or stolen, and the person reported that firearm lost or

1 stolen pursuant to Section 25250 prior to the completion of the
2 application to purchase the replacement handgun.

3 (12) The return of any handgun to its owner.

4 (13) A community college that is certified by the Commission
5 on Peace Officer Standards and Training to present the law
6 enforcement academy basic course or other commission-certified
7 law enforcement training.

8 SEC. 5. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution for certain
10 costs that may be incurred by a local agency or school district
11 because, in that regard, this act creates a new crime or infraction,
12 eliminates a crime or infraction, or changes the penalty for a crime
13 or infraction, within the meaning of Section 17556 of the
14 Government Code, or changes the definition of a crime within the
15 meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 However, if the Commission on State Mandates determines that
18 this act contains other costs mandated by the state, reimbursement
19 to local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.