

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN SENATE JUNE 17, 2013

AMENDED IN ASSEMBLY MAY 15, 2013

AMENDED IN ASSEMBLY APRIL 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 280

Introduced by Assembly Member Alejo

February 11, 2013

An act to amend Section 27590 of, and to add Section 27561 to, the Penal Code, relating to ~~firearms~~ elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 280, as amended, Alejo. ~~Firearms~~—Voting rights.

Existing law, the federal Voting Rights Act of 1965, provides that a change in voting procedures may not take effect in a state or political subdivision that is covered by the preclearance requirements of the federal act until the change is approved by a specified federal authority. A state or political subdivision is covered by the preclearance requirements of the federal act if it maintained a specified test or device as a prerequisite to voting, and had low voter registration or turnout, in the 1960s and early 1970s. The United States Supreme Court has held that the coverage formula of the federal act is unconstitutional and may not be used as a basis for requiring a jurisdiction to subject a proposed change in voting procedures to federal preclearance. Prior to that holding, the counties of Kings, Monterey, and Yuba were covered jurisdictions subject to the federal preclearance requirements.

This bill would establish a state preclearance system applicable only to the counties of Kings, Monterey, and Yuba. Under this system, if a county enacts or seeks to administer a voting qualification or prerequisite to voting, or a standard, practice, or procedure with respect to voting, that is different from that in force or effect on June 25, 2013, the county elections official would be required to submit the qualification, prerequisite, standard, practice, or procedure to the Attorney General for approval. This bill would require the Attorney General to approve the qualification, prerequisite, standard, practice, or procedure only if it neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. This bill would provide that the qualification, prerequisite, standard, practice, or procedure shall not take effect or be administered in the county until the county receives the approval of the Attorney General. By requiring specified counties to seek approval of the Attorney General for changes to voting procedures, this bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the counties of Kings, Monterey, and Yuba.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~(1) Existing law requires the parties to a firearms transaction to complete the sale, loan, or transfer through a licensed firearms dealer if neither party to a firearms transaction holds a firearms dealer's license.~~

~~This bill would prohibit a person, corporation, or dealer from transporting or bringing a firearm into the state for the purpose of selling, transferring, or loaning the firearm with the intent to avoid the above requirement. The bill would make a violation of this prohibition punishable by imprisonment in a county jail not exceeding one year, or in a county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. The bill would also make a violation of this prohibition subject to the 10-year prohibition on owning, purchasing, receiving, possessing, or having a~~

firearm. The bill would also make a person who violates this prohibition ineligible for probation, except in an unusual case where the interests of justice would best be served if the person is granted probation. By creating a new crime, this bill would impose a state-mandated local program.

~~(2) Existing law prohibits a licensed firearms dealer from selling, supplying, delivering, or giving possession or control of a handgun to any person under 21 years of age, or any other firearm to a person under 18 years of age. Existing law prohibits a licensed firearms dealer from delivering a firearm to a person within 10 days of the application to purchase or if the Department of Justice has notified the dealer that the person is prohibited from possessing a firearm. Existing law prohibits a dealer from delivering a handgun if the dealer is notified by the Department of Justice that the purchaser has made another application to purchase a handgun within the preceding 30-day period. Existing law also requires the firearm to be unloaded and securely wrapped or in a locked container, and requires that the purchaser present clear evidence of identity and age and a handgun safety certificate before delivery.~~

~~This bill would prohibit a firearms dealer from transporting or bringing into the state a firearm for the purpose of selling, transferring, or loaning the firearm with the intent to violate the above provisions. The bill would make a violation of this prohibition punishable by imprisonment in a county jail not exceeding one year, or in a county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. The bill would also make a violation of this prohibition subject to the 10-year prohibition on owning, purchasing, receiving, possessing, or having a firearm. The bill would also make a person who violates this prohibition ineligible for probation, except in an unusual case where the interests of justice would best be served if the person is granted probation. By creating a new crime, this bill would impose a state-mandated local program.~~

~~(3) Existing law prohibits a licensed firearms dealer from delivering a firearm to a person within 10 days of the application to purchase or if the Department of Justice has notified the dealer that the person is prohibited from possessing a firearm. Existing law also requires that the purchaser present clear evidence of identity and age and a handgun safety certificate before delivery.~~

~~This bill would prohibit a person from purchasing or receiving a firearm from a dealer if the person knows or has reasonable cause to~~

believe that the delivery of the firearm by that dealer to that person violates the above provisions. The bill would make a violation of this prohibition a misdemeanor. If the violation involves a handgun, the bill would make a violation of this provision punishable by imprisonment in a county jail not exceeding one year, or in a county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. If the violation involves a handgun, the bill would also make a violation of this provision subject to the 10-year prohibition on owning, purchasing, receiving, possessing, or having a firearm. If the violation involves a handgun, the bill would also make a person who violates this provision ineligible for probation, except in an unusual case where the interests of justice would best be served if the person is granted probation. By creating a new crime, this bill would impose a state-mandated local program.

(4) Existing law prohibits a licensed firearms dealer from delivering a firearm to a person within 10 days of the application to purchase or if the Department of Justice has notified the dealer that the person is prohibited from possessing a firearm. Existing law prohibits a dealer from delivery a handgun if the dealer is notified by the Department of Justice that the purchaser has made another application to purchase a handgun within the preceding 30-day period. Existing law also requires the firearm to be unloaded and securely wrapped or in a locked container, and that the purchaser present clear evidence of identity and age and a handgun safety certificate before delivery.

This bill would require a California resident who seeks to own and possess within the state a firearm acquired from outside of the state to have the firearm delivered to a dealer in the state for delivery pursuant to the above requirements. The bill would make a violation of this provision a misdemeanor. If the violation involves a handgun, the bill would make a violation of this provision punishable by imprisonment in a county jail not exceeding one year, or in a county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. If the violation involves a handgun, the bill would also make a violation of this prohibition subject to the 10-year prohibition on owning, purchasing, receiving, possessing, or having a firearm. If the violation involves a handgun, the bill would also make a person who violates this prohibition ineligible for probation, except in an unusual case where the interests of justice would best be served if the person is granted probation. 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. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *The United States Congress enacted the federal Voting*
4 *Rights Act of 1965 (42 U.S.C. Sec. 1971 et seq.) to address the*
5 *numerous obstacles and barriers that had been erected by many*
6 *states and local governments to prevent the free exercise of the*
7 *right to vote and to participate on an equal basis in the electoral*
8 *process by members of racial minorities.*

9 (b) *Section 4 of the federal act provides a coverage formula*
10 *identifying jurisdictions with histories of discriminatory voting*
11 *practices. Under the coverage formula, a covered jurisdiction is*
12 *a state or political subdivision that maintained a specified test or*
13 *device as a prerequisite to voting, and had low voter registration*
14 *or turnout, in the 1960s and early 1970s. Section 4 prohibits a*
15 *covered jurisdiction from denying a person the right to vote*
16 *because of his or her failure to comply with that test or device.*

17 (c) *Section 5 of the federal act requires federal approval before*
18 *a covered jurisdiction may enact or seek to administer any voting*
19 *qualification or prerequisite to voting, or standard, practice, or*
20 *procedure with respect to voting. This approval process is known*
21 *as “preclearance.” A jurisdiction may obtain preclearance only*
22 *by proving that the change has neither the purpose nor the effect*
23 *of denying or abridging the right to vote on account of race or*
24 *color.*

25 (d) *In this state, the counties of Kings, Monterey, and Yuba were*
26 *each identified as a covered jurisdiction for purposes of federal*
27 *preclearance, which required each county to receive federal*
28 *approval for a proposed change to its voting procedures.*

29 (e) *Sections 4 and 5 of the federal act have contributed to the*
30 *immense progress in protecting and expanding the right to vote*

1 *over the past few decades by ensuring that state and local election*
 2 *practices are just and fair.*

3 *(f) Recently, in Shelby County v. Holder (2013) 133 S.Ct. 2612,*
 4 *the United States Supreme Court held that the coverage formula*
 5 *in Section 4 of the federal act is unconstitutional in violation of*
 6 *the Tenth Amendment to the United States Constitution and can*
 7 *no longer be used as a basis for requiring jurisdictions to subject*
 8 *proposed changes in voting procedures to federal preclearance.*
 9 *As a result, a covered jurisdiction will no longer be required to*
 10 *submit proposed changes to its voting procedures for federal*
 11 *preclearance, leaving states and political subdivisions that have*
 12 *histories of voter discrimination without safeguards to protect*
 13 *against discriminatory voting practices.*

14 *(g) In an effort to remedy the abrupt ending to the federal*
 15 *preclearance safeguards against discriminatory voting practices,*
 16 *this bill establishes a state preclearance system, under which the*
 17 *counties of Kings Monterey, and Yuba must receive the approval*
 18 *of the state Attorney General before a change to voting procedures*
 19 *may take effect in that county.*

20 *SEC. 2. Chapter 5 (commencing with Section 400) is added to*
 21 *Division 0.5 of the Elections Code, to read:*

22
 23 *CHAPTER 5. STATE PRECLEARANCE*
 24

25 *400. This chapter applies only to Kings County, Monterey*
 26 *County, and Yuba County.*

27 *401. If a county enacts or seeks to administer a voting*
 28 *qualification or prerequisite to voting, or a standard, practice, or*
 29 *procedure with respect to voting, that is different from that in force*
 30 *or effect on June 25, 2013, the county elections official shall submit*
 31 *the qualification, prerequisite, standard, practice, or procedure*
 32 *to the Attorney General for approval. The Attorney General shall*
 33 *approve the qualification, prerequisite, standard, practice, or*
 34 *procedure only if it neither has the purpose nor will have the effect*
 35 *of denying or abridging the right to vote on account of race or*
 36 *color. The qualification, prerequisite, standard, practice, or*
 37 *procedure shall not take effect or be administered in the county*
 38 *until the county receives the approval of the Attorney General.*

39 *SEC. 3. The Legislature finds and declares that a special law*
 40 *is necessary and that a general law cannot be made applicable*

1 *within the meaning of Section 16 of Article IV of the California*
2 *Constitution because of the unique histories of discriminatory*
3 *voting practices in the counties of Kings, Monterey, and Yuba.*

4 *SEC. 4. If the Commission on State Mandates determines that*
5 *this act contains costs mandated by the state, reimbursement to*
6 *local agencies and school districts for those costs shall be made*
7 *pursuant to Part 7 (commencing with Section 17500) of Division*
8 *4 of Title 2 of the Government Code.*

9 ~~SECTION 1. Section 27561 is added to the Penal Code, to~~
10 ~~read:~~

11 ~~27561. (a) A person, corporation, or dealer shall not transport~~
12 ~~or bring into this state a firearm for the purpose of selling,~~
13 ~~transferring, or loaning the firearm with the intent to avoid the~~
14 ~~requirements of Section 27545, or with the intent to avoid the~~
15 ~~requirements of any exemption to Section 27545.~~

16 ~~(b) A dealer shall not transport or bring into this state a firearm~~
17 ~~for the purpose of selling, transferring, or loaning the firearm with~~
18 ~~the intent to violate Section 27510 or 27540.~~

19 ~~(c) A person shall not purchase or receive a firearm from a~~
20 ~~dealer, knowing or having reasonable cause to believe, that the~~
21 ~~delivery of that firearm by that dealer to that person violates~~
22 ~~subdivision (a), (c), (d), or (e) of Section 27540.~~

23 ~~(d) A California resident who seeks to own and possess within~~
24 ~~the state a firearm acquired from outside the state shall have that~~
25 ~~firearm delivered to a dealer in this state for delivery to that resident~~
26 ~~subject to the prohibitions specified in Section 27540.~~

27 ~~(e) Subdivision (d) does not apply to or affect any of the~~
28 ~~following:~~

29 ~~(1) A licensed collector who is subject to and complies with~~
30 ~~Section 27565.~~

31 ~~(2) A dealer, if the dealer is receiving the firearm in the course~~
32 ~~and scope of his or her activities as a dealer.~~

33 ~~(3) A wholesaler, if the wholesaler is receiving the firearm in~~
34 ~~the course and scope of his or her activities as a wholesaler.~~

35 ~~(4) A person licensed as an importer of firearms or ammunition~~
36 ~~or licensed as a manufacturer of firearms or ammunition pursuant~~
37 ~~to Chapter 44 (commencing with Section 921) of Title 18 of the~~
38 ~~United States Code and the regulations issued pursuant thereto if~~
39 ~~the importer or manufacturer is receiving the firearm in the course~~

1 and scope of his or her activities as a licensed importer or
2 manufacturer.

3 (5) A personal firearm importer who is subject to and complies
4 with Section 27560.

5 (6) A licensed collector who is subject to and complies with
6 Section 27966.

7 (7) A California resident who acquires ownership of a firearm
8 by bequest or intestate succession if the acquisition or ownership
9 of that firearm is exempt from the provisions of Section 27545
10 pursuant to, and is in compliance with, Section 27875.

11 (f) The provisions of this section are cumulative, and shall not
12 be construed as restricting the application of any other law.
13 However, an act or omission punishable in different ways by
14 different provisions of law shall not be punished under more than
15 one provision.

16 SEC. 2. Section 27590 of the Penal Code is amended to read:

17 27590. (a) Except as provided in subdivision (b), (c), or (e),
18 a violation of this article is a misdemeanor.

19 (b) If any of the following circumstances apply, a violation of
20 this article is punishable by imprisonment pursuant to subdivision
21 (h) of Section 1170 for two, three, or four years:

22 (1) If the violation is of subdivision (a) of Section 27500.

23 (2) If the defendant has a prior conviction of violating the
24 provisions, other than Section 27535, Section 27560 involving a
25 firearm that is not a handgun, or Section 27565 involving a firearm
26 that is not a handgun, of this article or former Section 12100 of
27 this code, as Section 12100 read at any time from when it was
28 enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to
29 when it was repealed by Section 18 of Chapter 23 of the Statutes
30 of 1994, or Section 8101 of the Welfare and Institutions Code.

31 (3) If the defendant has a prior conviction of violating any
32 offense specified in Section 29905 or of a violation of Section
33 32625 or 33410, or of former Section 12560, as that section read
34 at any time from when it was enacted by Section 4 of Chapter 931
35 of the Statutes of 1965 to when it was repealed by Section 14 of
36 Chapter 9 of the Statutes of 1990, or of any provision listed in
37 Section 16590.

38 (4) If the defendant is in a prohibited class described in Chapter
39 2 (commencing with Section 29800) or Chapter 3 (commencing

1 with Section 29900) of Division 9 of this title, or Section 8100 or
2 8103 of the Welfare and Institutions Code.

3 ~~(5) A violation of this article by a person who actively
4 participates in a “criminal street gang” as defined in Section 186.22.~~

5 ~~(6) A violation of Section 27510 involving the delivery of any
6 firearm to a person who the dealer knows, or should know, is a
7 minor.~~

8 ~~(e) If any of the following circumstances apply, a violation of
9 this article shall be punished by imprisonment in a county jail not
10 exceeding one year or pursuant to subdivision (h) of Section 1170,
11 or by a fine not to exceed one thousand dollars (\$1,000), or by
12 both that fine and imprisonment.~~

13 ~~(1) A violation of Section 27515, 27520, subdivision (b) of
14 Section 27500, or subdivision (a) or (b) of Section 27561.~~

15 ~~(2) A violation of Section 27505 involving the sale, loan, or
16 transfer of a handgun to a minor.~~

17 ~~(3) A violation of Section 27510 involving the delivery of a
18 handgun.~~

19 ~~(4) A violation of subdivision (a), (c), (d), (e), or (f) of Section
20 27540 involving a handgun.~~

21 ~~(5) A violation of Section 27545, or subdivision (c) or (d) of
22 Section 27561 involving a handgun.~~

23 ~~(6) A violation of Section 27550.~~

24 ~~(d) If both of the following circumstances apply, an additional
25 term of imprisonment pursuant to subdivision (h) of Section 1170
26 for one, two, or three years shall be imposed in addition and
27 consecutive to the sentence prescribed.~~

28 ~~(1) A violation of Section 27510 or subdivision (b) of Section
29 27500.~~

30 ~~(2) The firearm transferred in violation of Section 27510 or
31 subdivision (b) of Section 27500 is used in the subsequent
32 commission of a felony for which a conviction is obtained and the
33 prescribed sentence is imposed.~~

34 ~~(e) (1) A first violation of Section 27535 is an infraction
35 punishable by a fine of fifty dollars (\$50).~~

36 ~~(2) A second violation of Section 27535 is an infraction
37 punishable by a fine of one hundred dollars (\$100).~~

38 ~~(3) A third or subsequent violation of Section 27535 is a
39 misdemeanor.~~

1 ~~(4) For purposes of this subdivision each application to purchase~~
2 ~~a handgun in violation of Section 27535 shall be deemed a separate~~
3 ~~offense.~~

4 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
5 ~~Section 6 of Article XIII B of the California Constitution because~~
6 ~~the only costs that may be incurred by a local agency or school~~
7 ~~district will be incurred because this act creates a new crime or~~
8 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
9 ~~for a crime or infraction, within the meaning of Section 17556 of~~
10 ~~the Government Code, or changes the definition of a crime within~~
11 ~~the meaning of Section 6 of Article XIII B of the California~~
12 ~~Constitution.~~