

ASSEMBLY BILL

No. 500

Introduced by Assembly Member Ammiano

February 20, 2013

An act to amend Sections 11106, 16520, 16540, 16850, 23510, and 28220 of, and to add Sections 17060, 25135, and 28255 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 500, as introduced, Ammiano. Firearms.

(1) Existing law requires the Department of Justice, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. Existing law generally requires firearms transactions to be completed through a licensed firearms dealers. If a dealer cannot legally deliver a firearm, existing law requires the dealer to return the firearm to the transferor, seller, or person loaning the firearm.

This bill would require the department, if the department has not completed the examination of its records within 2 days prior to the conclusion of the 10-day waiting period described above, to notify the dealer of this fact, and would require the dealer to withhold delivery until 7 days have elapsed after the notification is received by the dealer. The bill would also prohibit a dealer from returning a firearm to the

person selling, loaning, or transferring the firearm until 7 days have elapsed after the notification is received by the dealer.

(2) Existing law requires a firearm purchaser to present the dealer with clear evidence of the person’s identity and age, and requires the dealer to make a permanent record of the transaction. Existing law requires the dealer to transmit the record of applicant information to the Department of Justice by electronic or telephonic transfer.

Commencing January 1, 2015, this bill would also require a dealer to notify the department that the person in an application to purchase actually took possession of the firearm, as specified.

(3) Under existing law certain persons are prohibited from owning or possessing a firearm, including persons convicted of certain violent offenses, and persons who have been adjudicated as having a mental disorder, among others.

This bill would prohibit a person who is residing with someone who is prohibited by state or federal law from possessing a firearm from keeping a firearm at that residence unless the firearm is either kept within a locked container, locked gun safe, locked trunk, locked with a locking device, disabled by a firearm safety device, or carried on the person. The bill would make a violation of this provision a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

(4) 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 11106 of the Penal Code, as added by
- 2 Chapter 745 of the Statutes of 2011, is amended to read:
- 3 11106. (a) In order to assist in the investigation of crime, the
- 4 prosecution of civil actions by city attorneys pursuant to paragraph
- 5 (3) of subdivision (c), the arrest and prosecution of criminals, and
- 6 the recovery of lost, stolen, or found property, the Attorney General
- 7 shall keep and properly file a complete record of all copies of
- 8 fingerprints, copies of licenses to carry firearms issued pursuant

1 to Section 26150, 26155, 26170, or 26215, information reported
2 to the Department of Justice pursuant to Section 26225, dealers'
3 records of sales of firearms, reports provided pursuant to Article
4 1 (commencing with Section 27500) of Chapter 4 of Division 6
5 of Title 4 of Part 6, or pursuant to any provision listed in
6 subdivision (a) of Section 16585, forms provided pursuant to
7 Section 12084, as that section read prior to being repealed, reports
8 provided pursuant to Article 1 (commencing with Section 26700)
9 and Article 2 (commencing with Section 26800) of Chapter 2 of
10 Division 6 of Title 4 of Part 6, that are not dealers' records of sales
11 of firearms, *information provided pursuant to Section 28255*, and
12 reports of stolen, lost, found, pledged, or pawned property in any
13 city or county of this state, and shall, upon proper application
14 therefor, furnish this information to the officers referred to in
15 Section 11105.

16 (b) (1) The Attorney General shall permanently keep and
17 properly file and maintain all information reported to the
18 Department of Justice pursuant to the following provisions as to
19 firearms and maintain a registry thereof:

20 (A) Article 1 (commencing with Section 26700) and Article 2
21 (commencing with Section 26800) of Chapter 2 of Division 6 of
22 Title 4 of Part 6.

23 (B) Article 1 (commencing with Section 27500) of Chapter 4
24 of Division 6 of Title 4 of Part 6.

25 (C) Chapter 5 (commencing with Section 28050) of Division 6
26 of Title 4 of Part 6.

27 (D) Any provision listed in subdivision (a) of Section 16585.

28 (E) Former Section 12084.

29 (F) *Section 28255*.

30 ~~(F)~~

31 (G) Any other law.

32 (2) The registry shall consist of all of the following:

33 (A) The name, address, identification of, place of birth (state
34 or country), complete telephone number, occupation, sex,
35 description, and all legal names and aliases ever used by the owner
36 or person being loaned the particular firearm as listed on the
37 information provided to the department on the Dealers' Record of
38 Sale, the Law Enforcement Firearms Transfer (LEFT), as defined
39 in former Section 12084, or reports made to the department

1 pursuant to any provision listed in subdivision (a) of Section 16585,
2 *Section 28255* or any other law.

3 (B) The name and address of, and other information about, any
4 person (whether a dealer or a private party) from whom the owner
5 acquired or the person being loaned the particular firearm and
6 when the firearm was acquired or loaned as listed on the
7 information provided to the department on the Dealers' Record of
8 Sale, the LEFT, or reports made to the department pursuant to any
9 provision listed in subdivision (a) of Section 16585 or any other
10 law.

11 (C) Any waiting period exemption applicable to the transaction
12 which resulted in the owner of or the person being loaned the
13 particular firearm acquiring or being loaned that firearm.

14 (D) The manufacturer's name if stamped on the firearm, model
15 name or number if stamped on the firearm, and, if applicable, the
16 serial number, other number (if more than one serial number is
17 stamped on the firearm), caliber, type of firearm, if the firearm is
18 new or used, barrel length, and color of the firearm, or, if the
19 firearm is not a handgun and does not have a serial number or any
20 identification number or mark assigned to it, that shall be noted.

21 (3) Information in the registry referred to in this subdivision
22 shall, upon proper application therefor, be furnished to the officers
23 referred to in Section 11105, to a city attorney prosecuting a civil
24 action, solely for use in prosecuting that civil action and not for
25 any other purpose, or to the person listed in the registry as the
26 owner or person who is listed as being loaned the particular firearm.

27 (4) If any person is listed in the registry as the owner of a firearm
28 through a Dealers' Record of Sale prior to 1979, and the person
29 listed in the registry requests by letter that the Attorney General
30 store and keep the record electronically, as well as in the record's
31 existing photographic, photostatic, or nonerasable optically stored
32 form, the Attorney General shall do so within three working days
33 of receipt of the request. The Attorney General shall, in writing,
34 and as soon as practicable, notify the person requesting electronic
35 storage of the record that the request has been honored as required
36 by this paragraph.

37 (c) (1) Any officer referred to in paragraphs (1) to (6), inclusive,
38 of subdivision (b) of Section 11105 may disseminate the name of
39 the subject of the record, the number of the firearms listed in the
40 record, and the description of any firearm, including the make,

1 model, and caliber, from the record relating to any firearm’s sale,
2 transfer, registration, or license record, or any information reported
3 to the Department of Justice pursuant to Section 26225, Article 1
4 (commencing with Section 26700) and Article 2 (commencing
5 with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part
6 6, Article 1 (commencing with Section 27500) of Chapter 4 of
7 Division 6 of Title 4 of Part 6, Chapter 5 (commencing with
8 Section 28050) of Division 6 of Title 4 of Part 6, Article 2
9 (commencing with Section 28150) of Chapter 6 of Division 6 of
10 Title 4 of Part 6, Article 5 (commencing with Section 30900) of
11 Chapter 2 of Division 10 of Title 4 of Part 6, Chapter 2
12 (commencing with Section 33850) of Division 11 of Title 4 of Part
13 6, or any provision listed in subdivision (a) of Section 16585, if
14 the following conditions are met:

15 (A) The subject of the record has been arraigned for a crime in
16 which the victim is a person described in subdivisions (a) to (f),
17 inclusive, of Section 6211 of the Family Code and is being
18 prosecuted or is serving a sentence for the crime, or the subject of
19 the record is the subject of an emergency protective order, a
20 temporary restraining order, or an order after hearing, which is in
21 effect and has been issued by a family court under the Domestic
22 Violence Protection Act set forth in Division 10 (commencing
23 with Section 6200) of the Family Code.

24 (B) The information is disseminated only to the victim of the
25 crime or to the person who has obtained the emergency protective
26 order, the temporary restraining order, or the order after hearing
27 issued by the family court.

28 (C) Whenever a law enforcement officer disseminates the
29 information authorized by this subdivision, that officer or another
30 officer assigned to the case shall immediately provide the victim
31 of the crime with a “Victims of Domestic Violence” card, as
32 specified in subparagraph (H) of paragraph (9) of subdivision (c)
33 of Section 13701.

34 (2) The victim or person to whom information is disseminated
35 pursuant to this subdivision may disclose it as he or she deems
36 necessary to protect himself or herself or another person from
37 bodily harm by the person who is the subject of the record.

38 ~~(d) This section shall become operative January 1, 2014.~~

39 SEC. 2. Section 16520 of the Penal Code is amended to read:

1 16520. (a) As used in this part, “firearm” means a device,
2 designed to be used as a weapon, from which is expelled through
3 a barrel, a projectile by the force of an explosion or other form of
4 combustion.

5 (b) As used in the following provisions, “firearm” includes the
6 frame or receiver of the weapon:

- 7 (1) Section 16550.
- 8 (2) Section 16730.
- 9 (3) Section 16960.
- 10 (4) Section 16990.
- 11 (5) Section 17070.
- 12 (6) Section 17310.
- 13 (7) Sections 26500 to 26588, inclusive.
- 14 (8) Sections 26600 to 27140, inclusive.
- 15 (9) Sections 27400 to 28000, inclusive.
- 16 (10) Section 28100.
- 17 (11) Sections 28400 to 28415, inclusive.
- 18 (12) Sections 29010 to 29150, inclusive.
- 19 (13) Sections 29610 to 29750, inclusive.
- 20 (14) Sections 29800 to 29905, inclusive.
- 21 (15) Sections 30150 to 30165, inclusive.
- 22 (16) Section 31615.
- 23 (17) Sections 31705 to 31830, inclusive.
- 24 (18) Sections 34355 to 34370, inclusive.
- 25 (19) Sections 8100, 8101, and 8103 of the Welfare and
26 Institutions Code.

27 (c) As used in the following provisions, “firearm” also includes
28 a rocket, rocket propelled projectile launcher, or similar device
29 containing an explosive or incendiary material, whether or not the
30 device is designed for emergency or distress signaling purposes:

- 31 (1) Section 16750.
- 32 (2) Subdivision (b) of Section 16840.
- 33 (3) Section 25400.
- 34 (4) Sections 25850 to 26025, inclusive.
- 35 (5) Subdivisions (a), (b), and (c) of Section 26030.
- 36 (6) Sections 26035 to 26055, inclusive.

37 (d) As used in the following provisions, “firearm” does not
38 include an unloaded antique firearm:

- 39 (1) Subdivisions (a) and (c) of Section 16730.
- 40 (2) Section 16550.

1 (3) Section 16960.

2 (4) Section 17310.

3 (5) Chapter 6 (commencing with Section 26350) of Division 5
4 of Title 4.

5 (6) Chapter 7 (commencing with Section 26400) of Division 5
6 of Title 4.

7 (7) Sections 26500 to 26588, inclusive.

8 (8) Sections 26700 to 26915, inclusive.

9 (9) Section 27510.

10 (10) Section 27530.

11 (11) Section 27540.

12 (12) Section 27545.

13 (13) Sections 27555 to 27570, inclusive.

14 (14) Sections 29010 to 29150, inclusive.

15 (15) *Section 25135.*

16 (e) As used in Sections 34005 and 34010, “firearm” does not
17 include a destructive device.

18 (f) As used in Sections 17280 and 24680, “firearm” has the
19 same meaning as in Section 922 of Title 18 of the United States
20 Code.

21 (g) As used in Sections 29010 to 29150, inclusive, “firearm”
22 includes the unfinished frame or receiver of a weapon that can be
23 readily converted to the functional condition of a finished frame
24 or receiver.

25 SEC. 3. Section 16540 of the Penal Code is amended to read:
26 16540. As used in *Section 25135 and* Division 2 (commencing
27 with Section 23620) of Title 4, “firearm safety device” means a
28 device other than a gun safe that locks and is designed to prevent
29 children and unauthorized users from firing a firearm. The device
30 may be installed on a firearm, be incorporated into the design of
31 the firearm, or prevent access to the firearm.

32 SEC. 4. Section 16850 of the Penal Code is amended to read:
33 16850. As used in Sections 17740, 23925, 25105, 25205,
34 23135, and 25610, in Article 3 (commencing with Section 25505)
35 of Chapter 2 of Division 5 of Title 4, in Chapter 6 (commencing
36 with Section 26350) of Division 5 of Title 4, and in Chapter 7
37 (commencing with Section 26400) of Division 5 of Title 4, “locked
38 container” means a secure container that is fully enclosed and
39 locked by a padlock, keylock, combination lock, or similar locking

1 device. The term “locked container” does not include the utility
2 or glove compartment of a motor vehicle.

3 SEC. 5. Section 17060 is added to the Penal Code, to read:

4 17060. As used in Section 25135, “residence” means any
5 structure intended or used for human habitation, including, but not
6 limited to, houses, condominiums, rooms, motels, hotels,
7 time-shares, and recreational or other vehicles where human
8 habitation occurs.

9 SEC. 6. Section 23510 of the Penal Code is amended to read:

10 23510. (a) For purposes of Sections 25400 and 26500,
11 Sections 27500 to 27590, inclusive, Section 28100, Sections 29610
12 to 29750, inclusive, Sections 29800 to 29905, inclusive, and
13 Section 31615 of this code, and any provision listed in subdivision
14 (a) of Section 16585 of this code, and Sections 8100, 8101, and
15 8103 of the Welfare and Institutions Code, notwithstanding the
16 fact that the term “any firearm” may be used in those sections,
17 each firearm or the frame or receiver of each firearm constitutes
18 a distinct and separate offense under those sections.

19 (b) *For purposes of Section 25135, notwithstanding the fact*
20 *that the term “any firearm” may be used in that section, each*
21 *firearm constitutes a distinct and separate offense under that*
22 *section.*

23 SEC. 7. Section 25135 is added to the Penal Code, to read:

24 25135. (a) A person who is 18 years of age or older, and who
25 is the owner, lessee, renter, or other legal occupant of a residence,
26 who owns a firearm and who knows or has reason to know that
27 another person also residing therein is prohibited by state or federal
28 law from possessing, receiving, owning, or purchasing a firearm
29 shall not keep in that residence any firearm that he or she owns
30 unless one of the following applies:

31 (1) The firearm is maintained within a locked container.

32 (2) The firearm is disabled by a firearm safety device.

33 (3) The firearm is maintained within a locked gun safe.

34 (4) the firearm is maintained within a locked trunk.

35 (5) The firearm is locked with a locking device as described in
36 Section 16860, which has rendered the firearm inoperable.

37 (6) The firearm is carried on the person or within close enough
38 proximity thereto that the individual can readily retrieve and use
39 the firearm as if carried on the person.

40 (b) A violation of this section is a misdemeanor.

1 (c) The prohibition of this section is cumulative, and does not
2 restrict the application of any other law. However, an act or
3 omission punishable in different ways by different provisions of
4 law shall not be punished under more than one provision.

5 SEC. 8. Section 28220 of the Penal Code is amended to read:

6 28220. (a) Upon submission of firearm purchaser information,
7 the Department of Justice shall examine its records, as well as
8 those records that it is authorized to request from the State
9 Department of State Hospitals pursuant to Section 8104 of the
10 Welfare and Institutions Code, in order to determine if the
11 purchaser is a person described in subdivision (a) of Section 27535,
12 or is prohibited by state or federal law from possessing, receiving,
13 owning, or purchasing a firearm.

14 (b) To the extent that funding is available, the Department of
15 Justice may participate in the National Instant Criminal Background
16 Check System (NICS), as described in subsection (t) of Section
17 922 of Title 18 of the United States Code, and, if that participation
18 is implemented, shall notify the dealer and the chief of the police
19 department of the city or city and county in which the sale was
20 made, or if the sale was made in a district in which there is no
21 municipal police department, the sheriff of the county in which
22 the sale was made, that the purchaser is a person prohibited from
23 acquiring a firearm under federal law.

24 (c) If the department determines that the purchaser is prohibited
25 by state or federal law from possessing, receiving, owning, or
26 purchasing a firearm or is a person described in subdivision (a) of
27 Section 27535, it shall immediately notify the dealer and the chief
28 of the police department of the city or city and county in which
29 the sale was made, or if the sale was made in a district in which
30 there is no municipal police department, the sheriff of the county
31 in which the sale was made, of that fact.

32 (d) If the department determines that the copies of the register
33 submitted to it pursuant to subdivision (d) of Section 28210 contain
34 any blank spaces or inaccurate, illegible, or incomplete information,
35 preventing identification of the purchaser or the handgun or other
36 firearm to be purchased, or if any fee required pursuant to Section
37 28225 is not submitted by the dealer in conjunction with
38 submission of copies of the register, the department may notify
39 the dealer of that fact. Upon notification by the department, the
40 dealer shall submit corrected copies of the register to the

1 department, or shall submit any fee required pursuant to Section
2 28225, or both, as appropriate and, if notification by the department
3 is received by the dealer at any time prior to delivery of the firearm
4 to be purchased, the dealer shall withhold delivery until the
5 conclusion of the waiting period described in Sections 26815 and
6 27540.

7 (e) If the department determines that the information transmitted
8 to it pursuant to Section 28215 contains inaccurate or incomplete
9 information preventing identification of the purchaser or the
10 handgun or other firearm to be purchased, or if the fee required
11 pursuant to Section 28225 is not transmitted by the dealer in
12 conjunction with transmission of the electronic or telephonic
13 record, the department may notify the dealer of that fact. Upon
14 notification by the department, the dealer shall transmit corrections
15 to the record of electronic or telephonic transfer to the department,
16 or shall transmit any fee required pursuant to Section 28225, or
17 both, as appropriate, and if notification by the department is
18 received by the dealer at any time prior to delivery of the firearm
19 to be purchased, the dealer shall withhold delivery until the
20 conclusion of the waiting period described in Sections 26815 and
21 27540.

22 (f) (1) *If the department has not completed the examination of*
23 *its records pursuant to subdivision (a) within two days prior to*
24 *the conclusion of the waiting period described in Sections 26815*
25 *and 27540, the department shall notify the dealer of this fact and*
26 *the dealer shall withhold delivery until seven days have elapsed*
27 *after this notification is received by the dealer.*

28 (2) *If the dealer is conducting the transaction pursuant to*
29 *Section 28050, paragraph (1) shall also preclude the return of the*
30 *firearm to the person selling, loaning, or transferring the firearm*
31 *until seven days have elapsed after the notification is received by*
32 *the dealer.*

33 SEC. 9. Section 28255 is added to the Penal Code, to read:

34 28255. Commencing January 1, 2015, if after the conclusion
35 of the waiting period described in Sections 26815 and 27540, the
36 individual named in the application as the purchaser of the firearm
37 takes possession of the firearm set forth in the application to
38 purchase, the dealer shall notify the Department of Justice of that
39 fact in a manner and within a time period specified by the

1 department, and with sufficient information to identify the
2 purchaser and the firearm that the purchaser took possession of.

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

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