

Introduced by Senator YeeJanuary 14, 2013

An act to amend Sections 16520, 16540, 16750, 16850, 23510, 27505, 27880, 27945, and 31810 of, to add Sections 17060 and 27881 to, and to add Chapter 4 (commencing with Section 25235) to Division 4 of Title 4 of Part 6 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 108, as introduced, Yee. Firearms: lending and residential storage.

Existing law regulates the possession of firearms, including storage requirements to prevent children from gaining access to firearms, and other safety devices including gun safes. Existing law also regulates the lending of firearms. Existing law defines the term "firearm" for these and other regulatory purposes, and excludes from that definition, "antique firearms" for various regulatory purposes.

This bill would provide that no person who is 18 years of age or older and who is the owner, lessee, renter, or other legal occupant of a residence, shall, while outside of that residence, keep in that residence a firearm that he or she owns or has lawful possession of unless the firearm is stored in one of certain specified ways, including in a gun safe or by using a firearm safety device. Violation of these provisions would be an offense punishable as an infraction, or for subsequent violations, as an infraction or misdemeanor, as specified. The bill would define the term "residence" for these purposes, would exclude antique firearms from these provisions, would provide that each firearm constitutes a distinct and separate offense under those provisions, and would make other conforming changes.

By creating a new crime, this bill would impose a state-mandated local program.

Existing law provides that no person, corporation, or firm shall sell, loan, or transfer a firearm to a minor, nor sell a handgun to an individual under 21 years of age, and excepts from that prohibition, specified loans of handguns to minors if certain criteria are met.

This bill would add to those criteria the requirement that the handgun be registered to the person loaning the handgun to the minor.

Existing law requires the loan of a firearm to be conducted through a licensed firearms dealer. Other existing law excepts from this requirement, certain loans of firearms between persons who are personally known to each other, if certain criteria are met.

This bill would add to those criteria the requirement that in the case of the loan of a handgun, the person lending the handgun is the registered owner of the handgun. The bill would create an additional exception to the dealer requirement for a loan of a firearm that occurs at the lender's residence or private property, as specified, if certain criteria are met.

Existing law, subject to exceptions, prohibits a person from loaning a handgun to a person who does not have a valid handgun safety certificate. Existing law excepts from that prohibition, certain loans to minors if certain criteria are met.

This bill would add to those criteria, the requirement that the handgun be registered to the person loaning the handgun to the minor.

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 16520 of the Penal Code is amended to
- 2 read:
- 3 16520. (a) As used in this part, "firearm" means a device,
- 4 designed to be used as a weapon, from which is expelled through
- 5 a barrel, a projectile by the force of an explosion or other form of
- 6 combustion.
- 7 (b) As used in the following provisions, "firearm" includes the
- 8 frame or receiver of the weapon:
- 9 (1) Section 16550.

- 1 (2) Section 16730.
- 2 (3) Section 16960.
- 3 (4) Section 16990.
- 4 (5) Section 17070.
- 5 (6) Section 17310.
- 6 (7) Sections 26500 to 26588, inclusive.
- 7 (8) Sections 26600 to 27140, inclusive.
- 8 (9) Sections 27400 to 28000, inclusive.
- 9 (10) Section 28100.
- 10 (11) Sections 28400 to 28415, inclusive.
- 11 (12) Sections 29010 to 29150, inclusive.
- 12 (13) Sections 29610 to 29750, inclusive.
- 13 (14) Sections 29800 to 29905, inclusive.
- 14 (15) Sections 30150 to 30165, inclusive.
- 15 (16) Section 31615.
- 16 (17) Sections 31705 to 31830, inclusive.
- 17 (18) Sections 34355 to 34370, inclusive.
- 18 (19) Sections 8100, 8101, and 8103 of the Welfare and
- 19 Institutions Code.
- 20 (c) As used in the following provisions, “firearm” also includes
- 21 a rocket, rocket propelled projectile launcher, or similar device
- 22 containing an explosive or incendiary material, whether or not the
- 23 device is designed for emergency or distress signaling purposes:
- 24 (1) Section 16750.
- 25 (2) Subdivision (b) of Section 16840.
- 26 (3) Section 25400.
- 27 (4) Sections 25850 to 26025, inclusive.
- 28 (5) Subdivisions (a), (b), and (c) of Section 26030.
- 29 (6) Sections 26035 to 26055, inclusive.
- 30 (d) As used in the following provisions, “firearm” does not
- 31 include an unloaded antique firearm:
- 32 (1) Subdivisions (a) and (c) of Section 16730.
- 33 (2) Section 16550.
- 34 (3) Section 16960.
- 35 (4) Section 17310.
- 36 (5) Chapter 6 (commencing with Section 26350) of Division 5
- 37 of Title 4.
- 38 (6) Chapter 7 (commencing with Section 26400) of Division 5
- 39 of Title 4.
- 40 (7) Sections 26500 to 26588, inclusive.

1 (8) Sections 26700 to 26915, inclusive.

2 (9) Section 27510.

3 (10) Section 27530.

4 (11) Section 27540.

5 (12) Section 27545.

6 (13) Sections 27555 to 27570, inclusive.

7 (14) Sections 29010 to 29150, inclusive.

8 (15) *Section 25235.*

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

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

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

18 SEC. 2. Section 16540 of the Penal Code is amended to read:

19 16540. As used in Division 2 (commencing with Section 23620)
20 of Title 4 *and in Section 25235*, “firearm safety device” means a
21 device other than a gun safe that locks and is designed to prevent
22 children and unauthorized users from firing a firearm. The device
23 may be installed on a firearm, be incorporated into the design of
24 the firearm, or prevent access to the firearm.

25 SEC. 3. Section 16750 of the Penal Code is amended to read:

26 16750. (a) As used in Section 25400, “lawful possession of
27 the firearm” means that the person who has possession or custody
28 of the firearm either lawfully owns the firearm or has the
29 permission of the lawful owner or a person who otherwise has
30 apparent authority to possess or have custody of the firearm. A
31 person who takes a firearm without the permission of the lawful
32 owner or without the permission of a person who has lawful
33 custody of the firearm does not have lawful possession of the
34 firearm.

35 (b) As used in *Chapter 4 (commencing with Section 25235) of*
36 *Division 4 of Title 4, Article 2 (commencing with Section 25850),*
37 *Article 3 (commencing with Section 25900), and Article 4*
38 *(commencing with Section 26000) of Chapter 3 of Division 5 of*
39 *Title 4, Chapter 6 (commencing with Section 26350) of Division*
40 *5 of Title 4, and Chapter 7 (commencing with Section 26400) of*

1 Division 5 of Title 4, “lawful possession of the firearm” means
2 that the person who has possession or custody of the firearm either
3 lawfully acquired and lawfully owns the firearm or has the
4 permission of the lawful owner or person who otherwise has
5 apparent authority to possess or have custody of the firearm. A
6 person who takes a firearm without the permission of the lawful
7 owner or without the permission of a person who has lawful
8 custody of the firearm does not have lawful possession of the
9 firearm.

10 SEC. 4. Section 16850 of the Penal Code is amended to read:
11 16850. As used in Sections 17740, 23925, 25105, 25205,
12 25235, and 25610, in Article 3 (commencing with Section 25505)
13 of Chapter 2 of Division 5 of Title 4, in Chapter 6 (commencing
14 with Section 26350) of Division 5 of Title 4, and in Chapter 7
15 (commencing with Section 26400) of Division 5 of Title 4, “locked
16 container” means a secure container that is fully enclosed and
17 locked by a padlock, keylock, combination lock, or similar locking
18 device. The term “locked container” does not include the utility
19 or glove compartment of a motor vehicle.

20 SEC. 5. Section 17060 is added to the Penal Code, to read:
21 17060. As used in Section 25235, “residence” is any structure
22 intended or used for human habitation, including, but not limited
23 to, houses, condominiums, rooms, motels, hotels, time-shares, and
24 recreational and other vehicles where human habitation occurs.

25 SEC. 6. Section 23510 of the Penal Code is amended to read:
26 23510. (a) For purposes of Sections 25400 and 26500,
27 Sections 27500 to 27590, inclusive, Section 28100, Sections 29610
28 to 29750, inclusive, Sections 29800 to 29905, inclusive, and
29 Section 31615 of this code, and any provision listed in subdivision
30 (a) of Section 16585 of this code, and Sections 8100, 8101, and
31 8103 of the Welfare and Institutions Code, notwithstanding the
32 fact that the term “any firearm” may be used in those sections,
33 each firearm or the frame or receiver of each firearm constitutes
34 a distinct and separate offense under those sections.

35 (b) *For purposes of Section 25235, notwithstanding the fact*
36 *that the term “any firearm” may be used in those sections, each*
37 *firearm constitutes a distinct and separate offense under that*
38 *section.*

39 SEC. 7. Chapter 4 (commencing with Section 25235) is added
40 to Division 4 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 4. STORAGE OF FIREARMS WITHIN RESIDENCES

25235. (a) A person who is 18 years of age or older and who is the owner, lessee, renter, or other legal occupant of a residence, shall not, while outside of that residence, store in that residence a firearm that he or she owns or has lawful possession of unless the firearm is stored in one of the following ways:

- (1) The firearm is within a locked container.
- (2) The firearm is disabled by a firearm safety device.
- (3) The firearm is within a locked gun safe.
- (4) The firearm is within a locked trunk.
- (5) The firearm is locked with a locking device as described in Section 16860, which has rendered the firearm inoperable.

(b) A violation of this section is punishable as follows:

- (1) A first violation involving a firearm that is not a handgun, as an infraction, punishable by a fine not exceeding one hundred dollars (\$100).
- (2) For a second violation involving any firearm or a first violation involving a handgun, as an infraction, punishable by a fine not exceeding one thousand dollars (\$1,000).
- (3) For a third or subsequent violation, as a misdemeanor.

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

SEC. 8. Section 27505 of the Penal Code is amended to read:

27505. (a) ~~No~~ A person, corporation, or firm shall *not* sell, loan, or transfer a firearm to a minor, nor sell a handgun to an individual under 21 years of age.

(b) Subdivision (a) ~~shall~~ *does* not apply to or affect the following circumstances:

- (1) The sale of a handgun, if the handgun is an antique firearm and the sale is to a person at least 18 years of age.
- (2) The transfer or loan of a firearm, other than a handgun, to a minor by the minor’s parent or legal guardian.
- (3) The transfer or loan of a firearm, other than a handgun, to a minor by a grandparent who is not the legal guardian of the minor, if the transfer is done with the express permission of the minor’s parent or legal guardian.

1 (4) The loan of a firearm, other than a handgun, to a minor, with
2 the express permission of the minor's parent or legal guardian, if
3 the loan does not exceed 30 days in duration and is for a lawful
4 purpose.

5 (5) The loan of a handgun to a minor by the minor's parent or
6 legal guardian, if ~~both~~ all of the following requirements are
7 satisfied:

8 (A) The minor is being loaned the firearm for the purposes of
9 engaging in a lawful, recreational sport, including, but not limited
10 to, competitive shooting, or agricultural, ranching, or hunting
11 activity, or a motion picture, television, or video production, or
12 entertainment or theatrical event, the nature of which involves the
13 use of a firearm.

14 (B) The duration of the loan does not exceed the amount of time
15 that is reasonably necessary to engage in the lawful, recreational
16 sport, including, but not limited to, competitive shooting, or
17 agricultural, ranching, or hunting activity, or a motion picture,
18 television, or video production, or entertainment or theatrical event,
19 the nature of which involves the use of a firearm.

20 (C) *The person loaning the handgun is the registered owner of*
21 *the handgun pursuant to Section 11106.*

22 (6) The loan of a handgun to a minor by a person who is not the
23 minor's parent or legal guardian, if all of the following
24 requirements are satisfied:

25 (A) The minor is accompanied by the minor's parent or legal
26 guardian when the loan is made, or the minor has the written
27 consent of the minor's parent or legal guardian, which is presented
28 at the time of the loan, or earlier.

29 (B) The minor is being loaned the firearm for the purpose of
30 engaging in a lawful, recreational sport, including, but not limited
31 to, competitive shooting, or agricultural, ranching, or hunting
32 activity, or a motion picture, television, or video production, or
33 entertainment or theatrical event, the nature of which involves the
34 use of a firearm.

35 (C) The duration of the loan does not exceed the amount of time
36 that is reasonably necessary to engage in the lawful, recreational
37 sport, including, but not limited to, competitive shooting, or
38 agricultural, ranching, or hunting activity, or a motion picture,
39 television, or video production, or entertainment or theatrical event,
40 the nature of which involves the use of a firearm.

1 (D) The duration of the loan does not, in any event, exceed 10
2 days.

3 (E) *The person loaning the handgun is the registered owner of*
4 *the handgun pursuant to Section 11106.*

5 SEC. 9. Section 27880 of the Penal Code is amended to read:
6 27880. Section 27545 does not apply to the loan of a firearm
7 between persons who are personally known to each other, if all of
8 the following requirements are satisfied:

9 (a) The loan is infrequent, as defined in Section 16730.

10 (b) The loan is for any lawful purpose.

11 (c) The loan does not exceed 30 days in duration.

12 (d) If the firearm is a handgun, the individual being loaned the
13 handgun shall have a valid handgun safety certificate.

14 (e) *If the firearm being loaned is a handgun, the person loaning*
15 *the handgun is the registered owner of the handgun, pursuant to*
16 *Section 11106.*

17 SEC. 10. Section 27881 is added to the Penal Code, to read:

18 27881. Section 27545 does not apply to the loan of a firearm
19 provided all of the following are met:

20 (a) If the firearm being loaned is a handgun, the handgun is
21 registered to the person making the loan pursuant to Section 11106.

22 (b) The loan occurs within the lender’s place of residence or
23 private property, except for property that is zoned for commercial,
24 retail, or industrial activity.

25 (c) The individual receiving the firearm is not prohibited by
26 state or federal law from possessing, receiving, owning, or
27 purchasing a firearm.

28 (d) If the firearm being loaned is a handgun, the individual
29 receiving the handgun is not under 21 years of age.

30 (e) If the firearm being loaned is a handgun, the individual
31 receiving the handgun has a valid handgun safety certificate.

32 (f) If the firearm being loaned is not a handgun, the individual
33 receiving the firearm is not under 18 years of age.

34 SEC. 11. Section 27945 of the Penal Code is amended to read:

35 27945. Section 27545 does not apply to or affect the following
36 circumstances:

37 (a) The transfer or loan of a firearm, other than a handgun, to a
38 minor by the minor’s parent or legal guardian.

39 (b) The transfer or loan of a firearm, other than a handgun, to
40 a minor by a grandparent who is not the legal guardian of the

1 minor, if the transfer is done with the express permission of the
2 minor's parent or legal guardian.

3 (c) The loan of a firearm, other than a handgun, to a minor, with
4 the express permission of the minor's parent or legal guardian, if
5 the loan does not exceed 30 days in duration and is for a lawful
6 purpose.

7 (d) The loan of a handgun to a minor by the minor's parent or
8 legal guardian, if ~~both~~ *all* of the following requirements are
9 satisfied:

10 (1) The minor is being loaned the firearm for the purposes of
11 engaging in a lawful, recreational sport, including, but not limited
12 to, competitive shooting, or agricultural, ranching, or hunting
13 activity, or a motion picture, television, or video production, or
14 entertainment or theatrical event, the nature of which involves the
15 use of a firearm.

16 (2) The duration of the loan does not exceed the amount of time
17 that is reasonably necessary to engage in the lawful, recreational
18 sport, including, but not limited to, competitive shooting, or
19 agricultural, ranching, or hunting activity, or a motion picture,
20 television, or video production, or entertainment or theatrical event,
21 the nature of which involves the use of a firearm.

22 (3) *The person loaning the handgun is the registered owner of*
23 *the handgun pursuant to Section 11106.*

24 (e) The loan of a handgun to a minor by a person who is not the
25 minor's parent or legal guardian, if all of the following
26 requirements are satisfied:

27 (1) The minor is accompanied by the minor's parent or legal
28 guardian when the loan is made, or the minor has the written
29 consent of the minor's parent or legal guardian, which is presented
30 at the time of the loan, or earlier.

31 (2) The minor is being loaned the firearm for the purpose of
32 engaging in a lawful, recreational sport, including, but not limited
33 to, competitive shooting, or agricultural, ranching, or hunting
34 activity, or a motion picture, television, or video production, or
35 entertainment or theatrical event, the nature of which involves the
36 use of a firearm.

37 (3) The duration of the loan does not exceed the amount of time
38 that is reasonably necessary to engage in the lawful, recreational
39 sport, including, but not limited to, competitive shooting, or
40 agricultural, ranching, or hunting activity, or a motion picture,

1 television, or video production, or entertainment or theatrical event,
2 the nature of which involves the use of a firearm.

3 (4) The duration of the loan does not, in any event, exceed 10
4 days.

5 (5) *The person loaning the handgun is the registered owner of*
6 *the handgun pursuant to Section 11106.*

7 SEC. 12. Section 31810 of the Penal Code is amended to read:
8 31810. Subdivision (a) of Section 31615 does not apply to or
9 affect the following circumstances:

10 (a) The loan of a handgun to a minor by the minor's parent or
11 legal guardian, if ~~both~~ *all* of the following requirements are
12 satisfied:

13 (1) The minor is being loaned the firearm for the purposes of
14 engaging in a lawful, recreational sport, including, but not limited
15 to, competitive shooting, or agricultural, ranching, or hunting
16 activity, or a motion picture, television, or video production, or
17 entertainment or theatrical event, the nature of which involves the
18 use of a firearm.

19 (2) The duration of the loan does not exceed the amount of time
20 that is reasonably necessary to engage in the lawful, recreational
21 sport, including, but not limited to, competitive shooting, or
22 agricultural, ranching, or hunting activity, or a motion picture,
23 television, or video production, or entertainment or theatrical event,
24 the nature of which involves the use of a firearm.

25 (3) *The person loaning the handgun is the registered owner of*
26 *the handgun pursuant to Section 11106.*

27 (b) The loan of a handgun to a minor by a person who is not the
28 minor's parent or legal guardian, if all of the following
29 requirements are satisfied:

30 (1) The minor is accompanied by the minor's parent or legal
31 guardian when the loan is made, or the minor has the written
32 consent of the minor's parent or legal guardian, which is presented
33 at the time of the loan, or earlier.

34 (2) The minor is being loaned the firearm for the purpose of
35 engaging in a lawful, recreational sport, including, but not limited
36 to, competitive shooting, or agricultural, ranching, or hunting
37 activity, or a motion picture, television, or video production, or
38 entertainment or theatrical event, the nature of which involves the
39 use of a firearm.

1 (3) The duration of the loan does not exceed the amount of time
2 that is reasonably necessary to engage in the lawful, recreational
3 sport, including, but not limited to, competitive shooting, or
4 agricultural, ranching, or hunting activity, or a motion picture,
5 television, or video production, or entertainment or theatrical event,
6 the nature of which involves the use of a firearm.

7 (4) The duration of the loan does not, in any event, exceed 10
8 days.

9 (5) *The person loaning the handgun is the registered owner of*
10 *the handgun pursuant to Section 11106.*

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