

AMENDED IN SENATE APRIL 1, 2013
AMENDED IN SENATE MARCH 11, 2013

SENATE BILL

No. 108

Introduced by Senator Yee

January 14, 2013

An act to amend Sections 16520, 16540, 16750, 16850, and 23510 of, to add Section 17060 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 amended, Yee. Firearms: 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" *and the term "outside of that 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.

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

1 (19) Sections 8100, 8101, and 8103 of the Welfare and
2 Institutions Code.

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

7 (1) Section 16750.

8 (2) Subdivision (b) of Section 16840.

9 (3) Section 25400.

10 (4) Sections 25850 to 26025, inclusive.

11 (5) Subdivisions (a), (b), and (c) of Section 26030.

12 (6) Sections 26035 to 26055, inclusive.

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

15 (1) Subdivisions (a) and (c) of Section 16730.

16 (2) Section 16550.

17 (3) Section 16960.

18 (4) Section 17310.

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

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

23 (7) Sections 26500 to 26588, inclusive.

24 (8) Sections 26700 to 26915, inclusive.

25 (9) Section 27510.

26 (10) Section 27530.

27 (11) Section 27540.

28 (12) Section 27545.

29 (13) Sections 27555 to 27570, inclusive.

30 (14) Sections 29010 to 29150, inclusive.

31 (15) Section 25235.

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

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

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

1 SEC. 2. Section 16540 of the Penal Code is amended to read:
2 16540. As used in Division 2 (commencing with Section 23620)
3 of Title 4 and in Section 25235, “firearm safety device” means a
4 device other than a gun safe that locks and is designed to prevent
5 children and unauthorized users from firing a firearm. The device
6 may be installed on a firearm, be incorporated into the design of
7 the firearm, or prevent access to the firearm.

8 SEC. 3. Section 16750 of the Penal Code is amended to read:
9 16750. (a) As used in Section 25400, “lawful possession of
10 the firearm” means that the person who has possession or custody
11 of the firearm either lawfully owns the firearm or has the
12 permission of the lawful owner or a person who otherwise has
13 apparent authority to possess or have custody of the firearm. A
14 person who takes a firearm without the permission of the lawful
15 owner or without the permission of a person who has lawful
16 custody of the firearm does not have lawful possession of the
17 firearm.

18 (b) As used in Chapter 4 (commencing with Section 25235) of
19 Division 4 of Title 4, Article 2 (commencing with Section 25850),
20 Article 3 (commencing with Section 25900), and Article 4
21 (commencing with Section 26000) of Chapter 3 of Division 5 of
22 Title 4, Chapter 6 (commencing with Section 26350) of Division
23 5 of Title 4, and Chapter 7 (commencing with Section 26400) of
24 Division 5 of Title 4, “lawful possession of the firearm” means
25 that the person who has possession or custody of the firearm either
26 lawfully acquired and lawfully owns the firearm or has the
27 permission of the lawful owner or person who otherwise has
28 apparent authority to possess or have custody of the firearm. A
29 person who takes a firearm without the permission of the lawful
30 owner or without the permission of a person who has lawful
31 custody of the firearm does not have lawful possession of the
32 firearm.

33 SEC. 4. Section 16850 of the Penal Code is amended to read:
34 16850. As used in Sections 17740, 23925, 25105, 25205,
35 25235, and 25610, in Article 3 (commencing with Section 25505)
36 of Chapter 2 of Division 5 of Title 4, in Chapter 6 (commencing
37 with Section 26350) of Division 5 of Title 4, and in Chapter 7
38 (commencing with Section 26400) of Division 5 of Title 4, “locked
39 container” means a secure container that is fully enclosed and
40 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 25235, “residence” is *the lawfully*
5 *possessed dwelling unit* in any structure intended or used for human
6 habitation, including, but not limited to, houses, condominiums,
7 rooms, motels, hotels, time-shares, and recreational and other
8 vehicles where human habitation occurs. For purposes of Section
9 25235, ~~“residence” extends to~~ “*outside of that residence*” means
10 *any distance beyond* the property lines of the property where the
11 structure is located, except in the case of recreational and other
12 vehicles.

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

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

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

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

28

29 CHAPTER 4. STORAGE OF FIREARMS WITHIN RESIDENCES

30

31 25235. (a) A person who is 18 years of age or older and who
32 is the owner, lessee, renter, or other legal occupant of a residence,
33 shall not, while outside of that residence, store in that residence a
34 firearm that he or she owns or has lawful possession of unless the
35 firearm is stored in one of the following ways:

- 36 (1) The firearm is within a locked container.
37 (2) The firearm is disabled by a firearm safety device.
38 (3) The firearm is within a locked gun safe.
39 (4) The firearm is within a locked trunk.

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

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

4 (1) A first violation involving a firearm that is not a handgun,
5 as an infraction, punishable by a fine not exceeding one hundred
6 dollars (\$100).

7 (2) For a second violation involving any firearm or a first
8 violation involving a handgun, as an infraction, punishable by a
9 fine not exceeding one thousand dollars (\$1,000).

10 (3) For a third or subsequent violation, as a misdemeanor.

11 (c) 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. 8. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.