

AMENDED IN ASSEMBLY AUGUST 14, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

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 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 amended, Yee. Firearms.

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.

This bill would require the Department of Justice to conduct a study to determine effective firearm safe storage measures to reduce, among other things, unintentional injury and death caused by firearms. The bill would require the study to, among other things, analyze local firearm safe storage ordinances in this state and firearm safe storage statutes in other states, as specified. The bill would require the department to report the study to the chairs of the Senate Public Safety Committee and the Assembly Public Safety Committee on or before January 1, 2016.

~~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.~~

~~Existing law, subject to exceptions, requires the loan of a firearm to be conducted through a licensed firearms dealer, as specified.~~

~~This bill would exempt from that requirement a loan of a firearm on residential or other private property, as specified, if certain requirements are met, including that the firearm does not leave the property where the loan occurred.~~

~~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-no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) *The Department of Justice shall conduct a*
- 2 *study to determine effective firearm safe storage measures to*
- 3 *reduce to following:*
- 4 (1) *Unintentional injury and death caused by firearms.*
- 5 (2) *Self-inflicted wounds caused by firearms.*

1 (3) *Firearm theft.*

2 (4) *Unauthorized use of a firearm resulting in the firearm being*
3 *used in a crime.*

4 (b) *The study shall include, but not be limited to, the following:*

5 (1) *A comprehensive overview of existing firearm safe storage*
6 *California law compared to local California ordinances and*
7 *statutes in other states.*

8 (2) *A comprehensive statistical analysis of the rates of*
9 *unintentional injury and death caused by firearms, self-inflicted*
10 *wounds caused by firearms, firearm theft, and the unauthorized*
11 *use of firearms resulting in a firearm being used in a crime,*
12 *compared to local firearm safe storage ordinances in California*
13 *and firearm safe storage statutes in other states.*

14 (3) *An estimate of the effectiveness of Section 4512 of the San*
15 *Francisco Police Code in preventing the incidents described in*
16 *subdivision (a).*

17 (4) *An estimate of the effectiveness in preventing the incidents*
18 *described in subdivision (a) on a statewide basis if Section 4512*
19 *of the San Francisco Police Code is enacted into statute.*

20 (c) *The department shall report the study to the chairs of the*
21 *Senate Committee on Public Safety and the Assembly Committee*
22 *on Public Safety on or before January 1, 2016.*

23 ~~SECTION 1. Section 16520 of the Penal Code is amended to~~
24 ~~read:~~

25 ~~16520. (a) As used in this part, "firearm" means a device,~~
26 ~~designed to be used as a weapon, from which is expelled through~~
27 ~~a barrel, a projectile by the force of an explosion or other form of~~
28 ~~combustion.~~

29 ~~(b) As used in the following provisions, "firearm" includes the~~
30 ~~frame or receiver of the weapon:~~

31 ~~(1) Section 16550.~~

32 ~~(2) Section 16730.~~

33 ~~(3) Section 16960.~~

34 ~~(4) Section 16990.~~

35 ~~(5) Section 17070.~~

36 ~~(6) Section 17310.~~

37 ~~(7) Sections 26500 to 26588, inclusive.~~

38 ~~(8) Sections 26600 to 27140, inclusive.~~

39 ~~(9) Sections 27400 to 28000, inclusive.~~

40 ~~(10) Section 28100.~~

- 1 ~~(11) Sections 28400 to 28415, inclusive.~~
 2 ~~(12) Sections 29010 to 29150, inclusive.~~
 3 ~~(13) Sections 29610 to 29750, inclusive.~~
 4 ~~(14) Sections 29800 to 29905, inclusive.~~
 5 ~~(15) Sections 30150 to 30165, inclusive.~~
 6 ~~(16) Section 31615.~~
 7 ~~(17) Sections 31705 to 31830, inclusive.~~
 8 ~~(18) Sections 34355 to 34370, inclusive.~~
 9 ~~(19) Sections 8100, 8101, and 8103 of the Welfare and~~
 10 ~~Institutions Code.~~
- 11 (e) As used in the following provisions, “firearm” also includes
 12 a rocket, rocket propelled projectile launcher, or similar device
 13 containing an explosive or incendiary material, whether or not the
 14 device is designed for emergency or distress signaling purposes:
- 15 ~~(1) Section 16750.~~
 16 ~~(2) Subdivision (b) of Section 16840.~~
 17 ~~(3) Section 25400.~~
 18 ~~(4) Sections 25850 to 26025, inclusive.~~
 19 ~~(5) Subdivisions (a), (b), and (c) of Section 26030.~~
 20 ~~(6) Sections 26035 to 26055, inclusive.~~
- 21 (d) As used in the following provisions, “firearm” does not
 22 include an unloaded antique firearm:
- 23 ~~(1) Subdivisions (a) and (c) of Section 16730.~~
 24 ~~(2) Section 16550.~~
 25 ~~(3) Section 16960.~~
 26 ~~(4) Section 17310.~~
 27 ~~(5) Chapter 6 (commencing with Section 26350) of Division 5~~
 28 ~~of Title 4.~~
 29 ~~(6) Chapter 7 (commencing with Section 26400) of Division 5~~
 30 ~~of Title 4.~~
 31 ~~(7) Sections 26500 to 26588, inclusive.~~
 32 ~~(8) Sections 26700 to 26915, inclusive.~~
 33 ~~(9) Section 27510.~~
 34 ~~(10) Section 27530.~~
 35 ~~(11) Section 27540.~~
 36 ~~(12) Section 27545.~~
 37 ~~(13) Sections 27555 to 27570, inclusive.~~
 38 ~~(14) Sections 29010 to 29150, inclusive.~~
 39 ~~(15) Section 25235.~~

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

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

6 ~~(g) As used in Sections 29010 to 29150, inclusive, “firearm”~~
7 ~~includes the unfinished frame or receiver of a weapon that can be~~
8 ~~readily converted to the functional condition of a finished frame~~
9 ~~or receiver.~~

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

11 16540. As used in Division 2 (commencing with Section 23620)
12 of Title 4 and in Section 25235, “firearm safety device” means a
13 device other than a gun safe that locks and is designed to prevent
14 children and unauthorized users from firing a firearm. The device
15 may be installed on a firearm, be incorporated into the design of
16 the firearm, or prevent access to the firearm.

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

18 16750. (a) As used in Section 25400, “lawful possession of
19 the firearm” means that the person who has possession or custody
20 of the firearm either lawfully owns the firearm or has the
21 permission of the lawful owner or a person who otherwise has
22 apparent authority to possess or have custody of the firearm. A
23 person who takes a firearm without the permission of the lawful
24 owner or without the permission of a person who has lawful
25 custody of the firearm does not have lawful possession of the
26 firearm.

27 (b) As used in Chapter 4 (commencing with Section 25235) of
28 Division 4 of Title 4, Article 2 (commencing with Section 25850),
29 Article 3 (commencing with Section 25900), and Article 4
30 (commencing with Section 26000) of Chapter 3 of Division 5 of
31 Title 4, Chapter 6 (commencing with Section 26350) of Division
32 5 of Title 4, and Chapter 7 (commencing with Section 26400) of
33 Division 5 of Title 4, “lawful possession of the firearm” means
34 that the person who has possession or custody of the firearm either
35 lawfully acquired and lawfully owns the firearm or has the
36 permission of the lawful owner or person who otherwise has
37 apparent authority to possess or have custody of the firearm. A
38 person who takes a firearm without the permission of the lawful
39 owner or without the permission of a person who has lawful

1 custody of the firearm does not have lawful possession of the
2 firearm.

3 SEC. 4. Section 16850 of the Penal Code is amended to read:

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

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

14 17060. As used in Section 25235, “residence” is the lawfully
15 possessed dwelling unit in any structure intended or used for human
16 habitation, including, but not limited to, houses, condominiums,
17 rooms, motels, hotels, time-shares, and recreational and other
18 vehicles where human habitation occurs. For purposes of Section
19 25235, “outside of that residence” means any distance beyond the
20 property lines of the property where the structure is located, except
21 in the case of recreational and other vehicles.

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

23 23510. (a) For purposes of Sections 25400 and 26500, Sections
24 27500 to 27590, inclusive, Section 28100, Sections 29610 to
25 29750, inclusive, Sections 29800 to 29905, inclusive, and Section
26 31615 of this code, and any provision listed in subdivision (a) of
27 Section 16585 of this code, and Sections 8100, 8101, and 8103 of
28 the Welfare and Institutions Code, notwithstanding the fact that
29 the term “any firearm” may be used in those sections, each firearm
30 or the frame or receiver of each firearm constitutes a distinct and
31 separate offense under those sections.

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

35 SEC. 7. Chapter 4 (commencing with Section 25235) is added
36 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 first violation involving a handgun, or a second violation involving any firearm, 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 27881 is added to the Penal Code, to read:

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

- (a) The person loaning the firearm is the registered owner of the firearm, as compared to the records described in Section 11106.
- (b) The loan occurs within the lender's place of residence or private property, except for property that is zoned for commercial, retail, or industrial activity.
- (c) The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.
- (d) The individual receiving the firearm is 18 years of age or older.

1 ~~(e) The firearm does not leave the property where the loan~~
2 ~~occurs.~~
3 ~~SEC. 9. 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.~~