

Introduced by Senator DeSaulnier
(Coauthor: Assembly Member Holden)

February 14, 2013

An act to amend Sections 31910 and 32010 of, and to add Sections 32040 and 32050 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 293, as introduced, DeSaulnier. Firearms: owner-authorized handguns.

Existing law establishes criteria for determining if a handgun is unsafe. Existing law generally requires manufacturers to submit samples of new handgun models for testing to determine if they are unsafe or may be approved for sale, as specified. Other provisions of existing law, subject to exceptions, generally make it an offense to manufacture or sell a handgun that is not safe.

This bill would provide that commencing 18 months following the Attorney General's reporting that owner-authorized handguns are available for retail sale, as specified, a handgun would be unsafe if it was not owner-authorized, as defined, and would provide an exception to these provisions for the sale, loan, or transfer of handguns manufactured in or imported into this state prior to that date, as specified. The bill would specify requirements that owner-authorized handguns would be required to meet in order for the Attorney General to determine that owner-authorized handguns are available for retail sale, and in order to comply with certain safety standards, as specified.

By expanding the application of provisions of law that define a criminal offense, this bill would impose a state-mandated local program.

The bill would require the Attorney General, commencing July 1, 2014, and every July 1 thereafter through July 1, 2019, to report to the

Governor and the Legislature regarding the progress made on the availability for retail sale of owner-authorized handguns, as specified.

The bill would also provide that, commencing 18 months following the Attorney General’s reporting that owner-authorized handguns are available for retail sale, as specified, any person who intentionally disables or circumvents the technology of an owner-authorized handgun is guilty of a misdemeanor.

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 31910 of the Penal Code is amended to
 2 read:

3 31910. As used in this part, “unsafe handgun” means any pistol,
 4 revolver, or other firearm capable of being concealed upon the
 5 person, for which any of the following is true:

6 (a) For a revolver:

7 (1) It does not have a safety device that, either automatically in
 8 the case of a double-action firing mechanism, or by manual
 9 operation in the case of a single-action firing mechanism, causes
 10 the hammer to retract to a point where the firing pin does not rest
 11 upon the primer of the cartridge.

12 (2) It does not meet the firing requirement for handguns.

13 (3) It does not meet the drop safety requirement for handguns.

14 (4) *Commencing 18 months following the release of a report*
 15 *by the Attorney General to the Legislature and the Governor*
 16 *reporting that owner-authorized handguns are available for retail*
 17 *sale, pursuant to Section 32040, it is not an owner-authorized*
 18 *handgun, provided, however, that this paragraph shall not apply*
 19 *to the sale, loan, or transfer of a revolver manufactured in or*
 20 *imported into this state prior to that date.*

21 (b) For a pistol:

1 (1) It does not have a positive manually operated safety device,
2 as determined by standards relating to imported guns promulgated
3 by the federal Bureau of Alcohol, Tobacco, Firearms and
4 Explosives.

5 (2) It does not meet the firing requirement for handguns.

6 (3) It does not meet the drop safety requirement for handguns.

7 (4) Commencing January 1, 2006, for a center fire
8 semiautomatic pistol that is not already listed on the roster pursuant
9 to Section 32015, it does not have either a chamber load indicator,
10 or a magazine disconnect mechanism.

11 (5) Commencing January 1, 2007, for all center fire
12 semiautomatic pistols that are not already listed on the roster
13 pursuant to Section 32015, it does not have both a chamber load
14 indicator and if it has a detachable magazine, a magazine
15 disconnect mechanism.

16 (6) Commencing January 1, 2006, for all rimfire semiautomatic
17 pistols that are not already listed on the roster pursuant to Section
18 32015, it does not have a magazine disconnect mechanism, if it
19 has a detachable magazine.

20 (7) (A) Commencing January 1, 2010, for all semiautomatic
21 pistols that are not already listed on the roster pursuant to Section
22 32015, it is not designed and equipped with a microscopic array
23 of characters that identify the make, model, and serial number of
24 the pistol, etched or otherwise imprinted in two or more places on
25 the interior surface or internal working parts of the pistol, and that
26 are transferred by imprinting on each cartridge case when the
27 firearm is fired, provided that the Department of Justice certifies
28 that the technology used to create the imprint is available to more
29 than one manufacturer unencumbered by any patent restrictions.

30 (B) The Attorney General may also approve a method of equal
31 or greater reliability and effectiveness in identifying the specific
32 serial number of a firearm from spent cartridge casings discharged
33 by that firearm than that which is set forth in this paragraph, to be
34 thereafter required as otherwise set forth by this paragraph where
35 the Attorney General certifies that this new method is also
36 unencumbered by any patent restrictions. Approval by the Attorney
37 General shall include notice of that fact via regulations adopted
38 by the Attorney General for purposes of implementing that method
39 for purposes of this paragraph.

1 (C) The microscopic array of characters required by this section
2 shall not be considered the name of the maker, model,
3 manufacturer's number, or other mark of identification, including
4 any distinguishing number or mark assigned by the Department
5 of Justice, within the meaning of Sections 23900 and 23920.

6 (8) *Commencing 18 months following the release of a report*
7 *by the Attorney General to the Legislature and the Governor*
8 *reporting that owner-authorized handguns are available for retail*
9 *sale, pursuant to Section 32040, it is not an owner-authorized*
10 *handgun, provided, however, that this paragraph shall not apply*
11 *to the sale, loan, or transfer of a pistol manufactured in or imported*
12 *into this state prior to that date.*

13 (c) *In addition to complying with the provisions of subdivisions*
14 *(a) and (b), as applicable, owner-authorized handguns shall comply*
15 *with the following performance standards:*

16 (1) *The firearm shall not fail to recognize the authorized user,*
17 *and shall not falsely recognize an unauthorized user, more than*
18 *one time per thousand recognition attempts.*

19 (2) *The time from first contact to use recognition and firearm*
20 *enablement shall be no more than 0.5 seconds.*

21 (3) *The time from loss of contact with the authorized user to*
22 *firearm disablement shall be no more than 0.5 seconds.*

23 (4) *When the firearm is enabled, the "ready" condition shall*
24 *be indicated by a visible indicator.*

25 (5) *If the recognition technology on the firearm is battery*
26 *operated, the firearm shall be equipped with a low power indicator*
27 *that emits an audible signal.*

28 (6) *If the user is not recognized, or if the power supply fails, the*
29 *firearm shall be inoperable.*

30 (7) *Enabling authorized user information shall be stored in the*
31 *firearm as permanent memory that is restored when power is*
32 *restored.*

33 (8) *The firearm shall be capable of use by more than one*
34 *authorized user and, if the firearm uses hand recognition*
35 *technology, it shall recognize either of the authorized user's hands.*

36 (d) *As used in this section, an "owner-authorized handgun"*
37 *means a handgun that has a permanent programmable biometric*
38 *or other permanent programmable feature as part of its original*
39 *manufacture that renders the handgun incapable of being fired*
40 *except when activated by the lawful owner or other users*

1 *authorized by the lawful owner, and that cannot be readily*
2 *deactivated.*

3 *(1) An owner-authorized handgun shall only be programmed*
4 *by a licensed firearms dealer.*

5 *(2) Biometric data collected for purposes of programming the*
6 *owner-authorized handgun shall not be used for any purpose other*
7 *than programming the owner-authorized handgun.*

8 *(3) The Department of Justice shall not retain any biometric*
9 *data that may be stored in an owner-authorized handgun.*

10 SEC. 2. Section 32010 of the Penal Code is amended to read:

11 32010. (a) Any pistol, revolver, or other firearm capable of
12 being concealed upon the person manufactured in this state,
13 imported into the state for sale, kept for sale, or offered or exposed
14 for sale, shall be tested within a reasonable period of time by an
15 independent laboratory certified pursuant to subdivision (b) to
16 determine whether that pistol, revolver, or other firearm capable
17 of being concealed upon the person meets or exceeds the standards
18 defined in Section 31910.

19 (b) On or before October 1, 2000, the Department of Justice
20 shall certify laboratories to verify compliance with the standards
21 defined in Section 31910. The department may charge any
22 laboratory that is seeking certification to test any pistol, revolver,
23 or other firearm capable of being concealed upon the person
24 pursuant to Sections 31900 to 32110, inclusive, a fee not exceeding
25 the costs of certification.

26 (c) The certified testing laboratory shall, at the manufacturer's
27 or importer's expense, test the firearm and submit a copy of the
28 final test report directly to the Department of Justice along with a
29 prototype of the weapon to be retained by the department. The
30 department shall notify the manufacturer or importer of its receipt
31 of the final test report and the department's determination as to
32 whether the firearm tested may be sold in this state.

33 (d) (1) Commencing January 1, 2006, no center-fire
34 semiautomatic pistol may be submitted for testing pursuant to
35 Sections 31900 to 32110, inclusive, if it does not have either a
36 chamber load indicator, or a magazine disconnect mechanism if
37 it has a detachable magazine.

38 (2) Commencing January 1, 2007, no center-fire semiautomatic
39 pistol may be submitted for testing pursuant to Sections 31900 to

1 32110, inclusive, if it does not have both a chamber load indicator
2 and a magazine disconnect mechanism.

3 (3) Commencing January 1, 2006, no rimfire semiautomatic
4 pistol may be submitted for testing pursuant to Sections 31900 to
5 32110, inclusive, if it has a detachable magazine, and does not
6 have a magazine disconnect mechanism.

7 (4) *Commencing 18 months following the release of a report*
8 *by the Attorney General to the Legislature and the Governor*
9 *reporting that owner-authorized handguns are available for retail*
10 *sale, pursuant to Section 32040, no handgun may be submitted for*
11 *testing pursuant to this chapter if it is not an owner-authorized*
12 *handgun as defined in Section 31910.*

13 SEC. 3. Section 32040 is added to the Penal Code, to read:

14 32040. (a) The Attorney General shall, commencing July 1,
15 2014, and every July 1 thereafter through July 1, 2019, submit a
16 written report to the Governor and the Legislature summarizing
17 the current availability of owner-authorized handguns, as defined
18 in subdivision (d) of Section 31910. The Attorney General shall
19 continue to submit reports until he or she has reported that
20 owner-authorized handguns are available for retail sale.

21 (b) Each report shall state whether owner-authorized handguns
22 are available for retail sale, and if not, what progress, if any, has
23 been made in the development of that technology since the previous
24 report.

25 (c) Each report shall state what, if any, pressures exist within
26 the firearms industry to deliberately withhold owner-authorized
27 handguns from the market.

28 (d) The Attorney General shall consult with law enforcement
29 agencies, firearms industry representatives, private technology
30 providers, the State Department of Public Health, the University
31 of California, other higher learning institutions, and other
32 appropriate parties in making reports and recommendations
33 pursuant to this section.

34 (e) Each report shall explicitly state all sources consulted and
35 relied upon, including the names and affiliations of those sources,
36 and shall be made publicly accessible.

37 (f) Once the Attorney General has reported that
38 owner-authorized handguns are being produced and offered for
39 sale in any state or country, the Attorney General shall contact the
40 manufacturer in writing and inform it of the provisions of

1 California law relating to owner-authorized handguns. The
2 Attorney General shall invite the manufacturer to submit its
3 owner-authorized handguns for testing at the manufacturer’s
4 expense.

5 (g) Owner-authorized handguns shall be deemed available for
6 retail sale when at least one domestic or foreign manufacturer has
7 submitted its owner-authorized handgun for testing and the
8 Attorney General has determined that it meets the performance
9 standards set forth in subdivision (c) of Section 31910, provided
10 that the Attorney General may not certify that “owner-authorized
11 handguns” are available for retail sale, unless the Attorney General
12 has determined that the requirements in either paragraph (1) or (2)
13 apply:

14 (1) The manufacturer has the capacity to meet the reasonably
15 expected demand of California residents for the new handguns,
16 there is one technology that meets the required standards, and the
17 manufacturer has provided written assurances that any applicable
18 patents will either not be asserted or will be available for licensing
19 on a nonexclusive basis on reasonable and nondiscriminatory
20 terms.

21 (2) There are at least two technologies that meet the required
22 standards.

23 (h) (1) The requirement for submitting a report imposed under
24 subdivision (a) is inoperative on January 1, 2020, pursuant to
25 Section 10231.5 of the Government Code.

26 (2) A report to be submitted pursuant to subdivision (a) shall
27 be submitted in compliance with Section 9795 of the Government
28 Code.

29 SEC. 4. Section 32050 is added to the Penal Code, to read:

30 32050. Commencing 18 months following the release of a
31 report by the Attorney General to the Legislature and the Governor
32 reporting that owner-authorized handguns are available for retail
33 sale, pursuant to Section 32040, any person who intentionally
34 disables or circumvents the technology of an owner-authorized
35 handgun, other than a licensed dealer as necessary to program the
36 owner-authorized handgun, is guilty of a misdemeanor.

37 SEC. 5. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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