

AMENDED IN SENATE MAY 24, 2013

SENATE BILL

No. 293

Introduced by Senator DeSaulnier
(Coauthor: Assembly Member Holden)

February 14, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 293, as amended, 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. *Existing law requires the Department of Justice to compile a roster listing all of the handguns that have been tested and determined not to be unsafe.* 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.~~

This bill would define an owner-authorized handgun as a handgun that has a permanent feature that renders the handgun incapable of being fired except when activated by the lawful owner or owners of the handgun. The bill would specify requirements that an owner-authorized handgun would be required to meet, and would require a manufacturer that has developed an owner-authorized handgun meeting those requirements to submit the handgun for testing, at the manufacturer's expense, before the handgun may be placed on the roster of handguns determined not to be unsafe. If two owner-authorized handguns have been placed on the roster, the bill would, commencing two years from the date that the second handgun was placed on the roster, prohibit the Department of Justice from placing a handgun on the roster that is not an owner-authorized handgun.

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:

1 31910. As used in this part, “unsafe handgun” means any pistol,
2 revolver, or other firearm capable of being concealed upon the
3 person, for which any of the following is true:

4 (a) For a revolver:

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

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

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

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

19 (b) For a pistol:

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

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

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

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

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

35 (6) Commencing January 1, 2006, for all rimfire semiautomatic
36 pistols that are not already listed on the roster pursuant to Section
37 32015, it does not have a magazine disconnect mechanism, if it
38 has a detachable magazine.

39 (7) (A) Commencing January 1, 2010, for all semiautomatic
40 pistols that are not already listed on the roster pursuant to Section

1 32015, it is not designed and equipped with a microscopic array
2 of characters that identify the make, model, and serial number of
3 the pistol, etched or otherwise imprinted in two or more places on
4 the interior surface or internal working parts of the pistol, and that
5 are transferred by imprinting on each cartridge case when the
6 firearm is fired, provided that the Department of Justice certifies
7 that the technology used to create the imprint is available to more
8 than one manufacturer unencumbered by any patent restrictions.

9 (B) The Attorney General may also approve a method of equal
10 or greater reliability and effectiveness in identifying the specific
11 serial number of a firearm from spent cartridge casings discharged
12 by that firearm than that which is set forth in this paragraph, to be
13 thereafter required as otherwise set forth by this paragraph where
14 the Attorney General certifies that this new method is also
15 unencumbered by any patent restrictions. Approval by the Attorney
16 General shall include notice of that fact via regulations adopted
17 by the Attorney General for purposes of implementing that method
18 for purposes of this paragraph.

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

24 ~~(8) Commencing 18 months following the release of a report~~
25 ~~by the Attorney General to the Legislature and the Governor~~
26 ~~reporting that owner-authorized handguns are available for retail~~
27 ~~sale, pursuant to Section 32040, it is not an owner-authorized~~
28 ~~handgun, provided, however, that this paragraph shall not apply~~
29 ~~to the sale, loan, or transfer of a pistol manufactured in or imported~~
30 ~~into this state prior to that date.~~

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

34 (1) The firearm shall not fail to recognize the authorized user,
35 and shall not falsely recognize an unauthorized user, more than
36 one time per thousand recognition attempts.

37 (2) The time from first contact to use recognition and firearm
38 enablement shall be no more than ~~0.5~~ 0.3 seconds.

39 (3) The time from loss of contact with the authorized user to
40 firearm disablement shall be no more than ~~0.5~~ 0.3 seconds.

1 (4) When the firearm is enabled, the “ready” condition shall be
2 indicated by a visible indicator.

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

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

8 (7) Enabling authorized user information shall be stored in the
9 firearm as permanent memory that is restored when power is
10 restored.

11 (8) The firearm shall be capable of use by more than one
12 authorized user and, if the firearm uses hand recognition
13 technology, it shall recognize either of the authorized user’s hands.

14 (d) As used in this section, an “owner-authorized handgun”
15 means a handgun that has a permanent programmable biometric
16 or other permanent programmable feature as part of its original
17 manufacture that renders the handgun incapable of being fired
18 except when activated by the lawful owner or other users
19 authorized by the lawful owner, and that cannot be readily
20 deactivated.

21 (1) An owner-authorized handgun shall only be programmed
22 by a licensed firearms dealer.

23 (2) Biometric data collected for purposes of programming the
24 owner-authorized handgun shall not be used for any purpose other
25 than programming the owner-authorized handgun.

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

28 *(e) (1) A manufacturer that has developed an owner-authorized*
29 *handgun meeting the minimum standards specified in subdivision*
30 *(c) shall submit the handgun for testing pursuant to Section 31905*
31 *at the manufacturer’s expense before the handgun may be placed*
32 *on the roster described in subdivision (a) of Section 32015.*

33 *(2) The Department of Justice shall place the owner-authorized*
34 *handgun on the roster if it meets the standards specified in*
35 *subdivision (c).*

36 *(3) If two owner-authorized handguns have been placed on the*
37 *roster described in subdivision (a) of Section 32015, then*
38 *commencing two years from the date that the second handgun was*
39 *placed on the roster, no handgun may be placed on the roster by*
40 *the Department of Justice that is not an owner-authorized handgun.*

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

2 ~~32010. (a) Any pistol, revolver, or other firearm capable of~~
3 ~~being concealed upon the person manufactured in this state,~~
4 ~~imported into the state for sale, kept for sale, or offered or exposed~~
5 ~~for sale, shall be tested within a reasonable period of time by an~~
6 ~~independent laboratory certified pursuant to subdivision (b) to~~
7 ~~determine whether that pistol, revolver, or other firearm capable~~
8 ~~of being concealed upon the person meets or exceeds the standards~~
9 ~~defined in Section 31910.~~

10 ~~(b) On or before October 1, 2000, the Department of Justice~~
11 ~~shall certify laboratories to verify compliance with the standards~~
12 ~~defined in Section 31910. The department may charge any~~
13 ~~laboratory that is seeking certification to test any pistol, revolver,~~
14 ~~or other firearm capable of being concealed upon the person~~
15 ~~pursuant to Sections 31900 to 32110, inclusive, a fee not exceeding~~
16 ~~the costs of certification.~~

17 ~~(c) The certified testing laboratory shall, at the manufacturer's~~
18 ~~or importer's expense, test the firearm and submit a copy of the~~
19 ~~final test report directly to the Department of Justice along with a~~
20 ~~prototype of the weapon to be retained by the department. The~~
21 ~~department shall notify the manufacturer or importer of its receipt~~
22 ~~of the final test report and the department's determination as to~~
23 ~~whether the firearm tested may be sold in this state.~~

24 ~~(d) (1) Commencing January 1, 2006, no center-fire~~
25 ~~semiautomatic pistol may be submitted for testing pursuant to~~
26 ~~Sections 31900 to 32110, inclusive, if it does not have either a~~
27 ~~chamber load indicator, or a magazine disconnect mechanism if~~
28 ~~it has a detachable magazine.~~

29 ~~(2) Commencing January 1, 2007, no center-fire semiautomatic~~
30 ~~pistol may be submitted for testing pursuant to Sections 31900 to~~
31 ~~32110, inclusive, if it does not have both a chamber load indicator~~
32 ~~and a magazine disconnect mechanism.~~

33 ~~(3) Commencing January 1, 2006, no rimfire semiautomatic~~
34 ~~pistol may be submitted for testing pursuant to Sections 31900 to~~
35 ~~32110, inclusive, if it has a detachable magazine, and does not~~
36 ~~have a magazine disconnect mechanism.~~

37 ~~(4) Commencing 18 months following the release of a report~~
38 ~~by the Attorney General to the Legislature and the Governor~~
39 ~~reporting that owner-authorized handguns are available for retail~~
40 ~~sale, pursuant to Section 32040, no handgun may be submitted for~~

1 testing pursuant to this chapter if it is not an owner-authorized
2 handgun as defined in Section 31910.

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

4 32040. (a) The Attorney General shall, commencing July 1,
5 2014, and every July 1 thereafter through July 1, 2019, submit a
6 written report to the Governor and the Legislature summarizing
7 the current availability of owner-authorized handguns, as defined
8 in subdivision (d) of Section 31910. The Attorney General shall
9 continue to submit reports until he or she has reported that
10 owner-authorized handguns are available for retail sale.

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

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

18 (d) The Attorney General shall consult with law enforcement
19 agencies, firearms industry representatives, private technology
20 providers, the State Department of Public Health, the University
21 of California, other higher learning institutions, and other
22 appropriate parties in making reports and recommendations
23 pursuant to this section.

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

27 (f) Once the Attorney General has reported that
28 owner-authorized handguns are being produced and offered for
29 sale in any state or country, the Attorney General shall contact the
30 manufacturer in writing and inform it of the provisions of
31 California law relating to owner-authorized handguns. The
32 Attorney General shall invite the manufacturer to submit its
33 owner-authorized handguns for testing at the manufacturer's
34 expense.

35 (g) Owner-authorized handguns shall be deemed available for
36 retail sale when at least one domestic or foreign manufacturer has
37 submitted its owner-authorized handgun for testing and the
38 Attorney General has determined that it meets the performance
39 standards set forth in subdivision (c) of Section 31910, provided
40 that the Attorney General may not certify that "owner-authorized

1 handguns” are available for retail sale, unless the Attorney General
2 has determined that the requirements in either paragraph (1) or (2)
3 apply:

4 (1) ~~The manufacturer has the capacity to meet the reasonably~~
5 ~~expected demand of California residents for the new handguns,~~
6 ~~there is one technology that meets the required standards, and the~~
7 ~~manufacturer has provided written assurances that any applicable~~
8 ~~patents will either not be asserted or will be available for licensing~~
9 ~~on a nonexclusive basis on reasonable and nondiscriminatory~~
10 ~~terms.~~

11 (2) ~~There are at least two technologies that meet the required~~
12 ~~standards.~~

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

16 (2) ~~A report to be submitted pursuant to subdivision (a) shall~~
17 ~~be submitted in compliance with Section 9795 of the Government~~
18 ~~Code.~~

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

20 ~~32050. Commencing 18 months following the release of a~~
21 ~~report by the Attorney General to the Legislature and the Governor~~
22 ~~reporting that owner-authorized handguns are available for retail~~
23 ~~sale, pursuant to Section 32040, any person who intentionally~~
24 ~~disables or circumvents the technology of an owner-authorized~~
25 ~~handgun, other than a licensed dealer as necessary to program the~~
26 ~~owner-authorized handgun, is guilty of a misdemeanor.~~

27 ~~SEC. 5.~~

28 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
29 ~~Section 6 of Article XIII B of the California Constitution because~~
30 ~~the only costs that may be incurred by a local agency or school~~
31 ~~district will be incurred because this act creates a new crime or~~
32 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
33 ~~for a crime or infraction, within the meaning of Section 17556 of~~
34 ~~the Government Code, or changes the definition of a crime within~~
35 ~~the meaning of Section 6 of Article XIII B of the California~~
36 ~~Constitution.~~