

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 2, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 363

Introduced by Senator Wright

February 20, 2013

An act to amend Sections 25100, 25200, 32000, and 32015 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 363, as amended, Wright. Firearms: criminal storage: unsafe handguns: fees.

(1) Existing law requires the Department of Justice to maintain a roster listing all pistols, revolvers, and other firearms capable of being concealed on the person that have been tested by a certified testing laboratory and have been determined not to be unsafe handguns. Existing law allows the department to charge manufacturers of firearms an annual fee not to exceed the costs of preparing, publishing, and maintaining the roster.

This bill would require the annual fee, commencing on January 1, 2015, to be paid on January 1, *or the next business day*, of every year.

(2) *Existing law makes it a misdemeanor punishable with specified penalties if a person keeps a handgun at the person's premises and knows or reasonably should know that a child is likely to gain access to the handgun without permission, as specified, and the child gains*

access to the handgun and carries it off-premises or off-premises to a school, as specified.

This bill would make that prohibition apply to a person who keeps a handgun at the person's premises and knows or reasonably should know that a prohibited person, as specified, is likely to gain access to the handgun, and the prohibited person gains access to the handgun and carries it off-premises or off-premises and to a school, as specified.

(3) Existing law makes it an offense for any person in this state to manufacture or cause to be manufactured, import into the state for sale, keep for sale, offer or expose for sale, give, or lend any unsafe handgun, as defined. Existing law exempts from those prohibitions, the sale of handguns to, or the purchase of handguns by, specified law enforcement entities, among others.

This bill would exempt the sale of handguns to, or the purchase of handguns by, federal law enforcement agencies from the application of those prohibitions.

~~(2)~~

(4) Existing law, subject to exceptions, provides that the offense of criminal storage of a firearm is committed when a person who keeps any loaded firearm within any premises that are under the person's custody or control knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, and the child obtains access to the firearm and thereby causes death or injury to the child or any other person, as specified, or carries the firearm to a public place, or unlawfully displays or uses the firearm, as specified.

This bill would expand these provisions to include the circumstance of when the person who keeps the firearm knows or reasonably should know that a person prohibited from owning or possessing a firearm or deadly weapon, as specified, is likely to gain access to the firearm, and that person gains access to the firearm and thereby causes death or injury to himself or herself or any other person, as specified, or carries the firearm to a public place, or unlawfully displays or uses the firearm, as specified.

*By expanding the scope of ~~an existing crime~~ *crimes*, 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 25100 of the Penal Code is amended to
2 read:

3 25100. (a) Except as provided in Section 25105, a person
4 commits the crime of “criminal storage of a firearm of the first
5 degree” if all of the following conditions are satisfied:

6 (1) The person keeps any loaded firearm within any premises
7 that are under the person’s custody or control.

8 (2) The person knows or reasonably should know that a child
9 is likely to gain access to the firearm without the permission of
10 the child’s parent or legal guardian, or that a person prohibited
11 from possessing a firearm or deadly weapon pursuant to state or
12 federal law is likely to gain access to the firearm.

13 (3) The child obtains access to the firearm and thereby causes
14 death or great bodily injury to the child or any other person, or the
15 person prohibited from possessing a firearm or deadly weapon
16 pursuant to state or federal law obtains access to the firearm and
17 thereby causes death or great bodily injury to himself or herself
18 or any other person.

19 (b) Except as provided in Section 25105, a person commits the
20 crime of “criminal storage of a firearm of the second degree” if
21 all of the following conditions are satisfied:

22 (1) The person keeps any loaded firearm within any premises
23 that are under the person’s custody or control.

24 (2) The person knows or reasonably should know that a child
25 is likely to gain access to the firearm without the permission of
26 the child’s parent or legal guardian, or that a person prohibited
27 from possessing a firearm or deadly weapon pursuant to state or
28 federal law is likely to gain access to the firearm.

29 (3) The child obtains access to the firearm and thereby causes
30 injury, other than great bodily injury, to the child or any other
31 person, or carries the firearm either to a public place or in violation
32 of Section 417, or the person prohibited from possessing a firearm
33 or deadly weapon pursuant to state or federal law obtains access

1 to the firearm and thereby causes injury, other than great bodily
2 injury, to himself or herself or any other person, or carries the
3 firearm either to a public place or in violation of Section 417.

4 *SEC. 2. Section 25200 of the Penal Code is amended to read:*

5 25200. (a) If all of the following conditions are satisfied, a
6 person shall be punished by imprisonment in a county jail not
7 exceeding one year, by a fine not exceeding one thousand dollars
8 (\$1,000), or by both that imprisonment and fine:

9 (1) The person keeps a pistol, revolver, or other firearm capable
10 of being concealed upon the person, loaded or unloaded, within
11 any premises that are under the person's custody or control.

12 (2) The person knows or reasonably should know that a child
13 is likely to gain access to that firearm without the permission of
14 the child's parent or legal guardian, *or that a person prohibited*
15 *from possessing a firearm or deadly weapon pursuant to state or*
16 *federal law is likely to gain access to the firearm.*

17 (3) The child *or the prohibited person* obtains access to that
18 firearm and thereafter carries that firearm off-premises.

19 (b) If all of the following conditions are satisfied, a person shall
20 be punished by imprisonment in a county jail not exceeding one
21 year, by a fine not exceeding five thousand dollars (\$5,000), or by
22 both that imprisonment and fine:

23 (1) The person keeps any firearm within any premises that are
24 under the person's custody or control.

25 (2) The person knows or reasonably should know that a child
26 is likely to gain access to the firearm without the permission of
27 the child's parent or legal guardian, *or that a person prohibited*
28 *from possessing a firearm or deadly weapon pursuant to state or*
29 *federal law is likely to gain access to the firearm.*

30 (3) The child *or the prohibited person* obtains access to the
31 firearm and thereafter carries that firearm off-premises to any
32 public or private preschool, elementary school, middle school,
33 high school, or to any school-sponsored event, activity, or
34 performance, whether occurring on school grounds or elsewhere.

35 (c) A pistol, revolver, or other firearm capable of being
36 concealed upon the person that a child *or prohibited person* gains
37 access to and carries off-premises in violation of this section shall
38 be deemed "used in the commission of any misdemeanor as
39 provided in this code or any felony" for the purpose of Section

1 29300 regarding the authority to confiscate firearms and other
2 deadly weapons as a nuisance.

3 (d) As used in this section, “off-premises” means premises other
4 than the premises where the firearm was stored.

5 *SEC. 3. Section 32000 of the Penal Code is amended to read:*

6 32000. (a) Commencing January 1, 2001, any person in this
7 state who manufactures or causes to be manufactured, imports into
8 the state for sale, keeps for sale, offers or exposes for sale, gives,
9 or lends any unsafe handgun shall be punished by imprisonment
10 in a county jail not exceeding one year.

11 (b) This section shall not apply to any of the following:

12 (1) The manufacture in this state, or importation into this state,
13 of any prototype pistol, revolver, or other firearm capable of being
14 concealed upon the person when the manufacture or importation
15 is for the sole purpose of allowing an independent laboratory
16 certified by the Department of Justice pursuant to Section 32010
17 to conduct an independent test to determine whether that pistol,
18 revolver, or other firearm capable of being concealed upon the
19 person is prohibited by Sections 31900 to 32110, inclusive, and,
20 if not, allowing the department to add the firearm to the roster of
21 pistols, revolvers, and other firearms capable of being concealed
22 upon the person that may be sold in this state pursuant to Section
23 32015.

24 (2) The importation or lending of a pistol, revolver, or other
25 firearm capable of being concealed upon the person by employees
26 or authorized agents of entities determining whether the weapon
27 is prohibited by this section.

28 (3) Firearms listed as curios or relics, as defined in Section
29 478.11 of Title 27 of the Code of Federal Regulations.

30 (4) The sale or purchase of any pistol, revolver, or other firearm
31 capable of being concealed upon the person, if the pistol, revolver,
32 or other firearm is sold to, or purchased by, the Department of
33 Justice, any police department, any sheriff’s official, any marshal’s
34 office, the Youth and Adult Correctional Agency, the California
35 Highway Patrol, any district attorney’s office, *any federal law*
36 *enforcement agency*, or the military or naval forces of this state or
37 of the United States for use in the discharge of their official duties.
38 Nor shall anything in this section prohibit the sale to, or purchase
39 by, sworn members of these agencies of any pistol, revolver, or
40 other firearm capable of being concealed upon the person.

1 (c) Violations of subdivision (a) are cumulative with respect to
2 each handgun and shall not be construed as restricting the
3 application of any other law. However, an act or omission
4 punishable in different ways by this section and other provisions
5 of law shall not be punished under more than one provision, but
6 the penalty to be imposed shall be determined as set forth in Section
7 654.

8 ~~SEC. 2.~~

9 *SEC. 4.* Section 32015 of the Penal Code is amended to read:

10 32015. (a) On and after January 1, 2001, the Department of
11 Justice shall compile, publish, and thereafter maintain a roster
12 listing all of the pistols, revolvers, and other firearms capable of
13 being concealed upon the person that have been tested by a certified
14 testing laboratory, have been determined not to be unsafe handguns,
15 and may be sold in this state pursuant to this part. The roster shall
16 list, for each firearm, the manufacturer, model number, and model
17 name.

18 (b) (1) The department may charge every person in this state
19 who is licensed as a manufacturer of firearms pursuant to Chapter
20 44 (commencing with Section 921) of Title 18 of the United States
21 Code, and any person in this state who manufactures or causes to
22 be manufactured, imports into the state for sale, keeps for sale, or
23 offers or exposes for sale any pistol, revolver, or other firearm
24 capable of being concealed upon the person in this state, an annual
25 fee not exceeding the costs of preparing, publishing, and
26 maintaining the roster pursuant to subdivision (a) and the costs of
27 research and development, report analysis, firearms storage, and
28 other program infrastructure costs necessary to implement Sections
29 31900 to 32110, inclusive. Commencing January 1, 2015, the
30 annual fee shall be paid on January 1, *or the next business day*, of
31 every year.

32 (2) Any pistol, revolver, or other firearm capable of being
33 concealed upon the person that is manufactured by a manufacturer
34 who manufactures or causes to be manufactured, imports into the
35 state for sale, keeps for sale, or offers or exposes for sale any pistol,
36 revolver, or other firearm capable of being concealed upon the
37 person in this state, and who fails to pay any fee required pursuant
38 to paragraph (1), may be excluded from the roster.

39 (3) If a purchaser has initiated a transfer of a handgun that is
40 listed on the roster as not unsafe, and prior to the completion of

1 the transfer, the handgun is removed from the roster of not unsafe
2 handguns because of failure to pay the fee required to keep that
3 handgun listed on the roster, the handgun shall be deliverable to
4 the purchaser if the purchaser is not otherwise prohibited from
5 purchasing or possessing the handgun. However, if a purchaser
6 has initiated a transfer of a handgun that is listed on the roster as
7 not unsafe, and prior to the completion of the transfer, the handgun
8 is removed from the roster pursuant to subdivision (d) of Section
9 32020, the handgun shall not be deliverable to the purchaser.

10 ~~SEC. 3.~~

11 *SEC. 5.* 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.