

AMENDED IN ASSEMBLY AUGUST 30, 2013

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.

(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.

*(5) This bill would incorporate additional changes to Section 25100 of the Penal Code proposed by AB 231 that would become operative if this bill and AB 231 are both enacted and this bill is enacted last. This bill would incorporate additional changes to Section 32000 of the Penal*

*Code proposed by AB 169 that would become operative if this bill and AB 169 are both enacted and this bill is enacted last.*

**By**

(6) *By expanding the scope of existing 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

1 the child’s parent or legal guardian, or that a person prohibited  
2 from possessing a firearm or deadly weapon pursuant to state or  
3 federal law is likely to gain access to the firearm.

4 (3) The child obtains access to the firearm and thereby causes  
5 injury, other than great bodily injury, to the child or any other  
6 person, or carries the firearm either to a public place or in violation  
7 of Section 417, or the person prohibited from possessing a firearm  
8 or deadly weapon pursuant to state or federal law obtains access  
9 to the firearm and thereby causes injury, other than great bodily  
10 injury, to himself or herself or any other person, or carries the  
11 firearm either to a public place or in violation of Section 417.

12 *SEC. 1.5. Section 25100 of the Penal Code is amended to read:*  
13 25100. (a) Except as provided in Section 25105, a person  
14 commits the crime of “criminal storage of a firearm ~~of~~ *in* the first  
15 degree” if all of the following conditions are satisfied:

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

18 (2) The person knows or reasonably should know that a child  
19 is likely to gain access to the firearm without the permission of  
20 the child’s parent or legal guardian, *or that a person prohibited*  
21 *from possessing a firearm or deadly weapon pursuant to state or*  
22 *federal law is likely to gain access to the firearm.*

23 (3) The child obtains access to the firearm and thereby causes  
24 death or great bodily injury to the child or any other person, *or the*  
25 *person prohibited from possessing a firearm or deadly weapon*  
26 *pursuant to state or federal law obtains access to the firearm and*  
27 *thereby causes death or great bodily injury to himself or herself*  
28 *or any other person.*

29 (b) Except as provided in Section 25105, a person commits the  
30 crime of “criminal storage of a firearm ~~of~~ *in* the second degree”  
31 if all of the following conditions are satisfied:

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

34 (2) The person knows or reasonably should know that a child  
35 is likely to gain access to the firearm without the permission of  
36 the child’s parent or legal guardian, *or that a person prohibited*  
37 *from possessing a firearm or deadly weapon pursuant to state or*  
38 *federal law is likely to gain access to the firearm.*

39 (3) The child obtains access to the firearm and thereby causes  
40 injury, other than great bodily injury, to the child or any other

1 person, or carries the firearm either to a public place or in violation  
2 of Section 417, *or the person prohibited from possessing a firearm*  
3 *or deadly weapon pursuant to state or federal law obtains access*  
4 *to the firearm and thereby causes injury, other than great bodily*  
5 *injury, to himself or herself or any other person, or carries the*  
6 *firearm either to a public place or in violation of Section 417.*

7 (c) *Except as provided in Section 25105, a person commits the*  
8 *crime of “criminal storage of a firearm in the third degree” if the*  
9 *person keeps any loaded firearm within any premises that are*  
10 *under the person’s custody or control and negligently stores or*  
11 *leaves a loaded firearm in a location where the person knows, or*  
12 *reasonably should know, that a child is likely to gain access to the*  
13 *firearm without the permission of the child’s parent or legal*  
14 *guardian, unless reasonable action is taken by the person to secure*  
15 *the firearm against access by the child.*

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

17 25200. (a) If all of the following conditions are satisfied, a  
18 person shall be punished by imprisonment in a county jail not  
19 exceeding one year, by a fine not exceeding one thousand dollars  
20 (\$1,000), or by both that imprisonment and fine:

21 (1) The person keeps a pistol, revolver, or other firearm capable  
22 of being concealed upon the person, loaded or unloaded, within  
23 any premises 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 that 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 or the prohibited person obtains access to that  
30 firearm and thereafter carries that firearm off-premises.

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

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

37 (2) The person knows or reasonably should know that a child  
38 is likely to gain access to the firearm without the permission of  
39 the child’s parent or legal guardian, or that a person prohibited

1 from possessing a firearm or deadly weapon pursuant to state or  
2 federal law is likely to gain access to the firearm.

3 (3) The child or the prohibited person obtains access to the  
4 firearm and thereafter carries that firearm off-premises to any  
5 public or private preschool, elementary school, middle school,  
6 high school, or to any school-sponsored event, activity, or  
7 performance, whether occurring on school grounds or elsewhere.

8 (c) A pistol, revolver, or other firearm capable of being  
9 concealed upon the person that a child or prohibited person gains  
10 access to and carries off-premises in violation of this section shall  
11 be deemed “used in the commission of any misdemeanor as  
12 provided in this code or any felony” for the purpose of Section  
13 29300 regarding the authority to confiscate firearms and other  
14 deadly weapons as a nuisance.

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

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

18 32000. (a) Commencing January 1, 2001, any person in this  
19 state who manufactures or causes to be manufactured, imports into  
20 the state for sale, keeps for sale, offers or exposes for sale, gives,  
21 or lends any unsafe handgun shall be punished by imprisonment  
22 in a county jail not exceeding one year.

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

24 (1) The manufacture in this state, or importation into this state,  
25 ~~of any prototype pistol, revolver, or other firearm capable of being~~  
26 ~~concealed upon the person~~ *a prototype handgun* when the  
27 manufacture or importation is for the sole purpose of allowing an  
28 independent laboratory certified by the Department of Justice  
29 pursuant to Section 32010 to conduct an independent test to  
30 determine whether that ~~pistol, revolver, or other firearm capable~~  
31 ~~of being concealed upon the person~~ *handgun* is prohibited by  
32 Sections 31900 to 32110, inclusive, and, if not, allowing the  
33 department to add the firearm to the roster of ~~pistols, revolvers,~~  
34 ~~and other firearms capable of being concealed upon the person~~  
35 *handguns* that may be sold in this state pursuant to Section 32015.

36 (2) The importation or lending of a ~~pistol, revolver, or other~~  
37 ~~firearm capable of being concealed upon the person~~ *handgun* by  
38 employees or authorized agents of entities determining whether  
39 the weapon is prohibited by this section.

1 (3) Firearms listed as curios or relics, as defined in Section  
2 478.11 of Title 27 of the Code of Federal Regulations.

3 (4) The sale or purchase of ~~any pistol, revolver, or other firearm~~  
4 ~~capable of being concealed upon the person~~ *a handgun*, if the  
5 ~~pistol, revolver, or other firearm~~ *handgun* is sold to, or purchased  
6 by, the Department of Justice, ~~any a~~ police department, ~~any a~~  
7 sheriff's official, ~~any a~~ marshal's office, the ~~Youth and Adult~~  
8 ~~Correctional Agency~~, *Department of Corrections and*  
9 *Rehabilitation*, the California Highway Patrol, any district  
10 attorney's office, any federal law enforcement agency, or the  
11 military or naval forces of this state or of the United States for use  
12 in the discharge of their official duties. ~~Nor shall anything in this~~  
13 ~~section~~ *This section does not* prohibit the sale to, or purchase by,  
14 sworn members of these agencies of ~~any pistol, revolver, or other~~  
15 ~~firearm capable of being concealed upon the person~~ *a handgun*.

16 (c) Violations of subdivision (a) are cumulative with respect to  
17 each handgun and shall not be construed as restricting the  
18 application of any other law. However, an act or omission  
19 punishable in different ways by this section and other provisions  
20 of law shall not be punished under more than one provision, but  
21 the penalty to be imposed shall be determined as set forth in Section  
22 654.

23 *SEC. 3.5. Section 32000 of the Penal Code is amended to read:*

24 32000. (a) Commencing January 1, 2001, any person in this  
25 state who manufactures or causes to be manufactured, imports into  
26 the state for sale, keeps for sale, offers or exposes for sale, gives,  
27 or lends any unsafe handgun shall be punished by imprisonment  
28 in a county jail not exceeding one year.

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

30 (1) The manufacture in this state, or importation into this state,  
31 ~~of any prototype pistol, revolver, or other firearm capable of being~~  
32 ~~concealed upon the person~~ *a prototype handgun* when the  
33 manufacture or importation is for the sole purpose of allowing an  
34 independent laboratory certified by the Department of Justice  
35 pursuant to Section 32010 to conduct an independent test to  
36 determine whether that ~~pistol, revolver, or other firearm capable~~  
37 ~~of being concealed upon the person~~ *handgun* is prohibited by  
38 Sections 31900 to 32110, inclusive, and, if not, allowing the  
39 department to add the firearm to the roster of ~~pistols, revolvers,~~

1 ~~and other firearms capable of being concealed upon the person~~  
2 ~~handguns~~ that may be sold in this state pursuant to Section 32015.

3 (2) ~~The importation or lending of a pistol, revolver, or other~~  
4 ~~firearm capable of being concealed upon the person handgun~~ by  
5 employees or authorized agents of entities determining whether  
6 the weapon is prohibited by this section.

7 (3) Firearms listed as curios or relics, as defined in Section  
8 478.11 of Title 27 of the Code of Federal Regulations.

9 (4) ~~The sale or purchase of any pistol, revolver, or other firearm~~  
10 ~~capable of being concealed upon the person a handgun~~, if the  
11 ~~pistol, revolver, or other firearm handgun~~ is sold to, or purchased  
12 by, the Department of Justice, ~~any a~~ police department, ~~any a~~  
13 ~~sheriff's official, any a~~ marshal's office, the ~~Youth and Adult~~  
14 ~~Correctional Agency~~ *Department of Corrections and*  
15 *Rehabilitation*, the California Highway Patrol, any district  
16 attorney's office, *any federal law enforcement agency*, or the  
17 military or naval forces of this state or of the United States for use  
18 in the discharge of their official duties. ~~Nor shall anything in this~~  
19 ~~section~~ *This section does not* prohibit the sale to, or purchase by,  
20 sworn members of these agencies of ~~any pistol, revolver, or other~~  
21 ~~firearm capable of being concealed upon the person a handgun~~. *A*  
22 *person who, under this paragraph, acquires a handgun that is not*  
23 *on the roster required by Section 32015, shall not sell or otherwise*  
24 *transfer ownership of the handgun to a person who is not exempted*  
25 *under this paragraph.*

26 (c) Violations of subdivision (a) are cumulative with respect to  
27 each handgun and shall not be construed as restricting the  
28 application of any other law. However, an act or omission  
29 punishable in different ways by this section and other provisions  
30 of law shall not be punished under more than one provision, but  
31 the penalty to be imposed shall be determined as set forth in Section  
32 654.

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

34 32015. (a) On and after January 1, 2001, the Department of  
35 Justice shall compile, publish, and thereafter maintain a roster  
36 listing all of the ~~pistols, revolvers, and other firearms capable of~~  
37 ~~being concealed upon the person handguns~~ that have been tested  
38 by a certified testing laboratory, have been determined not to be  
39 unsafe handguns, and may be sold in this state pursuant to this

1 part. The roster shall list, for each firearm, the manufacturer, model  
2 number, and model name.

3 (b) (1) The department may charge every person in this state  
4 who is licensed as a manufacturer of firearms pursuant to Chapter  
5 44 (commencing with Section 921) of Title 18 of the United States  
6 Code, and any person in this state who manufactures or causes to  
7 be manufactured, imports into the state for sale, keeps for sale, or  
8 offers or exposes for sale any ~~pistol, revolver, or other firearm~~  
9 ~~capable of being concealed upon the person~~ *handgun* in this state,  
10 an annual fee not exceeding the costs of preparing, publishing, and  
11 maintaining the roster pursuant to subdivision (a) and the costs of  
12 research and development, report analysis, firearms storage, and  
13 other program infrastructure costs necessary to implement Sections  
14 31900 to 32110, inclusive. Commencing January 1, 2015, the  
15 annual fee shall be paid on January 1, or the next business day, of  
16 every year.

17 (2) Any ~~pistol, revolver, or other firearm capable of being~~  
18 ~~concealed upon the person~~ *handgun* that is manufactured by a  
19 manufacturer who manufactures or causes to be manufactured,  
20 imports into the state for sale, keeps for sale, or offers or exposes  
21 for sale any ~~pistol, revolver, or other firearm capable of being~~  
22 ~~concealed upon the person~~ *handgun* in this state, and who fails to  
23 pay any fee required pursuant to paragraph (1), may be excluded  
24 from the roster.

25 (3) If a purchaser has initiated a transfer of a handgun that is  
26 listed on the roster as not unsafe, and prior to the completion of  
27 the transfer, the handgun is removed from the roster of not unsafe  
28 handguns because of failure to pay the fee required to keep that  
29 handgun listed on the roster, the handgun shall be deliverable to  
30 the purchaser if the purchaser is not otherwise prohibited from  
31 purchasing or possessing the handgun. However, if a purchaser  
32 has initiated a transfer of a handgun that is listed on the roster as  
33 not unsafe, and prior to the completion of the transfer, the handgun  
34 is removed from the roster pursuant to subdivision (d) of Section  
35 32020, the handgun shall not be deliverable to the purchaser.

36 *SEC. 5. Section 1.5 of this bill incorporates amendments to*  
37 *Section 25100 of the Penal Code proposed by both this bill and*  
38 *Assembly Bill 231. It shall only become operative if (1) both bills*  
39 *are enacted and become effective on or before January 1, 2014,*  
40 *(2) each bill amends Section 25100 of the Penal Code, and (3) this*

1 *bill is enacted after Assembly Bill 231, in which case Section 1 of*  
2 *this bill shall not become operative.*

3 *SEC. 6. Section 3.5 of this bill incorporates amendments to*  
4 *Section 32000 of the Penal Code proposed by both this bill and*  
5 *Assembly Bill 169. It shall only become operative if (1) both bills*  
6 *are enacted and become effective on or before January 1, 2014,*  
7 *(2) each bill amends Section 32000 of the Penal Code, and (3) this*  
8 *bill is enacted after Assembly Bill 169, in which case Section 3 of*  
9 *this bill shall not become operative.*

10 ~~SEC. 5.~~

11 *SEC. 7.* 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.