

AMENDED IN SENATE APRIL 3, 2013

**SENATE BILL**

**No. 396**

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**Introduced by Senators Hancock and Steinberg  
(Coauthor: Senator Jackson)**

February 20, 2013

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An act to amend Sections ~~16350 and 32310~~ 16350, 16740, 32310, 32400, 32405, and 32435 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as amended, Hancock. Firearms: magazine capacity.

(1) Existing law, ~~except as specified, for purposes pertaining to the ammunition capacity of certain assault weapons, defines capacity~~ “capacity to accept more than 10 rounds rounds” to mean capable of accommodating more than 10 rounds, but specifies that this term does not apply to a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

~~This bill would add that, to fall under the definition, the magazine body must only be of sufficient length to accommodate no more than 10 rounds of ammunition and the internal working parts of the magazine, including, but not limited to, the follower and spring.~~ *revise that definition to mean capable of holding more than 10 rounds, but not applying to a feeding device that has been permanently altered so that it cannot hold more than 10 rounds.*

(2) *Existing law prohibits the sale, gift, and loan of a large-capacity magazine. Existing law defines “large-capacity magazine” to mean any ammunition feeding device with the capacity to accept more than 10 rounds, but provides that the definition may not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.*

*This bill would include within that definition of large-capacity magazine a feeding device that had a capacity of more than 10 rounds but has been permanently modified to hold no more than 10 rounds of ammunition, and would exclude from that definition a magazine that is only of sufficient length to hold no more than 10 rounds of ammunition.*

~~(2) Existing law, except as specified, makes it a misdemeanor or specified felony punishable by imprisonment in a county jail for any person in this state to manufacture or cause to be manufactured, import into the state, keep for sale, or offer or expose for sale, or give, or lend, any large-capacity magazine.~~

*This bill, commencing July 1, 2014, would make it an offense for any person in this state who possesses to possess any large-capacity magazine, regardless of the date the magazine was acquired, punishable by imprisonment in a county jail not exceeding one year. The bill would authorize various methods by which a person in lawful possession of a large-capacity magazine may dispose of the magazine prior to the July 1, 2014, prohibition on possession.*

*(3) Existing law creates various exceptions to that crime, which include, but are not limited to, the sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.*

*This bill would make conforming changes by adding possession to those provisions.*

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 16350 of the Penal Code is amended to~~  
2 ~~read:~~

3 ~~16350. (a) As used in Section 30515, “capacity to accept more~~  
4 ~~than 10 rounds” means capable of accommodating more than 10~~  
5 ~~rounds.~~

6 ~~(b) The term defined in subdivision (a) does not apply to a~~  
7 ~~feeding device that has been permanently altered so that it cannot~~  
8 ~~accommodate more than 10 rounds or to a magazine body that is~~  
9 ~~only of sufficient length to accommodate up to 10 rounds of~~  
10 ~~ammunition and the internal working parts of the magazine,~~  
11 ~~including, but not limited to, the follower and spring.~~

12 ~~SECTION 1. Section 16350 of the Penal Code is amended to~~  
13 ~~read:~~

14 ~~16350. As used in Section 30515, “capacity to accept more~~  
15 ~~than 10 rounds” means capable of accommodating holding more~~  
16 ~~than 10 rounds. The term does not apply to a feeding device that~~  
17 ~~has been permanently altered so that it cannot accommodate hold~~  
18 ~~more than 10 rounds.~~

19 ~~SEC. 2. Section 16740 of the Penal Code is amended to read:~~

20 ~~16740. (a) As used in this part, “large-capacity magazine”~~  
21 ~~means any ammunition feeding device with the capacity to accept~~  
22 ~~more than 10 rounds, but shall not be construed to include any of~~  
23 ~~the following: rounds. As used in this part, “large-capacity~~  
24 ~~magazine” also includes a feeding device that had a capacity of~~  
25 ~~more than 10 rounds but has been permanently modified to hold~~  
26 ~~no more than 10 rounds of ammunition.~~

27 ~~(b) As used in this part, “large-capacity magazine” does not~~  
28 ~~include any of the following:~~

29 ~~(1) A magazine that is only of sufficient length to hold no more~~  
30 ~~than 10 rounds of ammunition.~~

31 ~~(2) A .22 caliber tube ammunition feeding device.~~

32 ~~(3) A tubular magazine that is contained in a lever-action~~  
33 ~~firearm.~~

34 ~~(a) A feeding device that has been permanently altered so that~~  
35 ~~it cannot accommodate more than 10 rounds.~~

36 ~~(b) A .22 caliber tube ammunition feeding device.~~

37 ~~(c) A tubular magazine that is contained in a lever-action~~  
38 ~~firearm.~~

39 ~~SEC. 2.~~

40 ~~SEC. 3. Section 32310 of the Penal Code is amended to read:~~

1 32310. (a) Except as provided in Article 2 (commencing with  
2 Section 32400) of this chapter and in Chapter 1 (commencing with  
3 Section 17700) of Division 2 of Title 2, any person in this state  
4 who manufactures or causes to be manufactured, imports into the  
5 state, keeps for sale, or offers or exposes for sale, or who gives,  
6 or lends, or, *commencing July 1, 2014*, possess any large-capacity  
7 magazine, regardless of the date the magazine was acquired, is  
8 punishable by imprisonment in a county jail not exceeding one  
9 year or imprisonment pursuant to subdivision (h) of Section 1170.

10 (b) Any person who, prior to July 1, 2014, legally possesses a  
11 large-capacity magazine shall dispose of that magazine by any of  
12 the following means:

13 (1) Remove the large-capacity magazine from the state.

14 (2) Prior to July 1, 2014, sell the large-capacity magazine to a  
15 licensed firearms dealer.

16 (3) Destroy the large-capacity magazine.

17 (4) Surrender the large-capacity magazine to a law enforcement  
18 agency for destruction.

19 SEC. 4. Section 32400 of the Penal Code is amended to read:

20 32400. Section 32310 does not apply to the sale of, giving of,  
21 lending of, *possession of*, importation into this state of, or purchase  
22 of, any large-capacity magazine to or by any federal, state, county,  
23 city and county, or city agency that is charged with the enforcement  
24 of any law, for use by agency employees in the discharge of their  
25 official duties, whether on or off duty, and where the use is  
26 authorized by the agency and is within the course and scope of  
27 their duties.

28 SEC. 5. Section 32405 of the Penal Code is amended to read:

29 32405. Section 32310 does not apply to the sale to, lending to,  
30 transfer to, purchase by, receipt of, *possession of*, or importation  
31 into this state of, a large-capacity magazine by a sworn peace  
32 officer, as defined in Chapter 4.5 (commencing with Section 830)  
33 of Title 3 of Part 2, who is authorized to carry a firearm in the  
34 course and scope of that officer's duties.

35 SEC. 6. Section 32435 of the Penal Code is amended to read:

36 32435. Section 32310 does not apply to any of the following:

37 (a) The sale of, giving of, lending of, *possession of*, importation  
38 into this state of, or purchase of, any large-capacity magazine, to  
39 or by any entity that operates an armored vehicle business pursuant  
40 to the laws of this state.

1 (b) The lending *and possession* of large-capacity magazines by  
2 an entity specified in subdivision (a) to its authorized employees,  
3 while in the course and scope of employment for purposes that  
4 pertain to the entity's armored vehicle business.

5 (c) The return of those large-capacity magazines to the entity  
6 specified in subdivision (a) by those employees specified in  
7 subdivision (b).

8 ~~SEC. 3.~~

9 *SEC. 7.* No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.