

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 462

Introduced by Assembly Member Grove

February 23, 2015

An act to amend ~~Section 26815~~ Sections 26805, 26815, 27540, and 28220 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 462, as amended, Grove. Firearms: waiting period.

Existing law generally regulates the sale and transfer of firearms, including, among other requirements and subject to exceptions, that the transfer of a firearm be conducted through a firearms dealer. Existing law, subject to exceptions, imposes a 10-day waiting period for delivery of a firearm, during which time a background check is conducted by the Department of Justice to determine if the proposed recipient of the firearm is prohibited from owning or possessing a firearm.

This bill would provide that if the person is determined by the department not to be prohibited from possessing, receiving, owning, or purchasing a firearm, and the person possesses a firearm as confirmed by the Automated Firearms System (AFS), is authorized to carry a concealed firearm, or possesses a valid Certificate of Eligibility and a firearm as confirmed by the AFS, the department shall immediately notify the dealer who shall immediately release the firearm to the person and not wait the full 10 days to do so.

~~Existing law prohibits the delivery of a firearm within 10 days of an application to purchase, or, after notice by the Department of Justice, within 10 days of the submission to the department of any correction~~

to the application, or within 10 days of the submission to the department of a required fee, whichever is later.

~~This bill would make technical, nonsubstantive changes to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature in enacting this*
2 *act to codify the holding of the United States District Court,*
3 *Eastern District of California in *Silvester v. Harris* (2014) 41 Supp.*
4 *3rd 927, by removing the 10-day waiting period on the delivery*
5 *of a firearm for persons who already possess a firearm as*
6 *confirmed by the Automated Firearms System (AFS), are*
7 *authorized to carry concealed firearms, or possess a valid*
8 *Certificate of Eligibility and a firearm as confirmed by the AFS.*

9 SEC. 2. *Section 26805 of the Penal Code is amended to read:*

10 26805. (a) Except as provided in subdivisions (b) and (c), the
11 business of a licensee shall be conducted only in the buildings
12 designated in the license.

13 (b) (1) A person licensed pursuant to Sections 26700 and 26705
14 may take possession of firearms and commence preparation of
15 registers for the sale, delivery, or transfer of firearms at any gun
16 show or event, as defined in Section 478.100 of Title 27 of the
17 Code of Federal Regulations, or its successor, if the gun show or
18 event is not conducted from any motorized or towed vehicle. A
19 person conducting business pursuant to this subdivision shall be
20 entitled to conduct business as authorized herein at any gun show
21 or event in the state, without regard to the jurisdiction within this
22 state that issued the license pursuant to Sections 26700 and 26705,
23 provided the person complies with all applicable laws, including,
24 but not limited to, the waiting period specified in ~~subdivision (a)~~
25 ~~of~~ Section 26815, and all applicable local laws, regulations, and
26 fees, if any.

27 (2) A person conducting business pursuant to this subdivision
28 shall publicly display the person’s license issued pursuant to
29 Sections 26700 and 26705, or a facsimile thereof, at any gun show
30 or event, as specified in this subdivision.

1 (c) (1) A person licensed pursuant to Sections 26700 and 26705
2 may engage in the sale and transfer of firearms other than
3 handguns, at events specified in Sections 26955, 27655, 27900,
4 and 27905, subject to the prohibitions and restrictions contained
5 in those sections.

6 (2) A person licensed pursuant to Sections 26700 and 26705
7 may also accept delivery of firearms other than handguns, outside
8 the building designated in the license, provided the firearm is being
9 donated for the purpose of sale or transfer at an auction or similar
10 event specified in Section 27900.

11 (d) The firearm may be delivered to the purchaser, transferee,
12 or person being loaned the firearm at one of the following places:

13 (1) The building designated in the license.

14 (2) The places specified in subdivision (b) or (c).

15 (3) The place of residence of, the fixed place of business of, or
16 on private property owned or lawfully possessed by, the purchaser,
17 transferee, or person being loaned the firearm.

18 *SEC. 3. Section 26815 of the Penal Code is amended to read:*

19 26815. ~~No~~(a) A firearm shall *not* be delivered:

20 ~~(a)~~

21 (1) Within 10 days of the application to purchase, or, after notice
22 by the department pursuant to Section 28220, within 10 days of
23 the submission to the department of any correction to the
24 application, or within 10 days of the submission to the department
25 of any fee required pursuant to Section 28225, whichever is later.

26 ~~(b)~~

27 (2) Unless unloaded and securely wrapped or unloaded and in
28 a locked container.

29 ~~(c)~~ Unless the purchaser, transferee, or person being loaned the
30 firearm presents clear evidence of the person's identity and age to
31 the dealer.

32 ~~(d)~~

33 (3) Whenever the dealer is notified by the Department of Justice
34 that the person is prohibited by state or federal law from processing,
35 owning, purchasing, or receiving a firearm. The dealer shall make
36 available to the person in the prohibited class a prohibited notice
37 and transfer form, provided by the department, stating that the
38 person is prohibited from owning or possessing a firearm, and that
39 the person may obtain from the department the reason for the
40 prohibition.

1 (b) Notwithstanding paragraph (1) of subdivision (a), if the
2 person is determined, pursuant to Section 28220, not to be
3 prohibited from possessing, receiving, owning, or purchasing a
4 firearm, and the person possesses a firearm as confirmed by the
5 Automated Firearms System (AFS), is authorized to carry a
6 concealed firearm, or possesses a valid Certificate of Eligibility
7 and a firearm as confirmed by the AFS, the dealer shall
8 immediately release the firearm to the person and not wait the full
9 10 days to do so.

10 SEC. 4. Section 27540 of the Penal Code is amended to read:
11 27540. (a) A dealer, whether or not acting pursuant to Chapter
12 5 (commencing with Section 28050), shall not deliver a firearm
13 to a person, as follows:

14 (a)

15 (1) Within 10 days of the application to purchase, or, after notice
16 by the department pursuant to Section 28220, within 10 days of
17 the submission to the department of any correction to the
18 application, or within 10 days of the submission to the department
19 of any fee required pursuant to Section 28225, whichever is later.

20 (b)

21 (2) Unless unloaded and securely wrapped or unloaded and in
22 a locked container.

23 (c)

24 (3) Unless the purchaser, transferee, or person being loaned the
25 firearm presents clear evidence of the person's identity and age to
26 the dealer.

27 (d)

28 (4) Whenever the dealer is notified by the Department of Justice
29 that the person is prohibited by state or federal law from possessing,
30 receiving, owning, or purchasing a firearm.

31 (e)

32 (5) A handgun shall not be delivered unless the purchaser,
33 transferee, or person being loaned the handgun presents a handgun
34 safety certificate. Commencing January 1, 2015, any firearm,
35 including a handgun, shall not be delivered unless the purchaser,
36 transferee, or person being loaned the firearm presents a firearm
37 safety certificate to the dealer, except that in the case of a handgun,
38 an unexpired handgun safety certificate may be presented.

39 (f)

1 (6) A handgun shall not be delivered whenever the dealer is
2 notified by the Department of Justice that within the preceding
3 30-day period the purchaser has made another application to
4 purchase a handgun and that the previous application to purchase
5 involved none of the entities specified in subdivision (b) of Section
6 27535.

7 (b) *Notwithstanding paragraph (1) of subdivision (a), if the*
8 *person is determined, pursuant to Section 28220, not to be*
9 *prohibited from possessing, receiving, owning, or purchasing a*
10 *firearm, and the person possesses a firearm as confirmed by the*
11 *Automated Firearms System (AFS), is authorized to carry a*
12 *concealed firearm, or possesses a valid Certificate of Eligibility*
13 *and a firearm as confirmed by the AFS, the dealer shall*
14 *immediately release the firearm to the person and not wait the full*
15 *10 days to do so.*

16 SEC. 5. Section 28220 of the Penal Code is amended to read:

17 28220. (a) Upon submission of firearm purchaser information,
18 the Department of Justice shall examine its records, as well as
19 those records that it is authorized to request from the State
20 Department of State Hospitals pursuant to Section 8104 of the
21 Welfare and Institutions Code, in order to determine if the
22 purchaser is a person described in subdivision (a) of Section 27535,
23 or is prohibited by state or federal law from possessing, receiving,
24 owning, or purchasing a firearm.

25 (b) To the extent that funding is available, the Department of
26 Justice may participate in the National Instant Criminal Background
27 Check System (NICS), as described in subsection (t) of Section
28 922 of Title 18 of the United States Code, and, if that participation
29 is implemented, shall notify the dealer and the chief of the police
30 department of the city or city and county in which the sale was
31 made, or if the sale was made in a district in which there is no
32 municipal police department, the sheriff of the county in which
33 the sale was made, that the purchaser is a person prohibited from
34 acquiring a firearm under federal law.

35 (c) (1) If the department determines that the purchaser is
36 prohibited by state or federal law from possessing, receiving,
37 owning, or purchasing a firearm or is a person described in
38 subdivision (a) of Section 27535, it shall immediately notify the
39 dealer and the chief of the police department of the city or city and
40 county in which the sale was made, or if the sale was made in a

1 district in which there is no municipal police department, the sheriff
2 of the county in which the sale was made, of that fact.

3 (2) *If the department determines that the purchaser is not*
4 *prohibited by state or federal law from possessing, receiving,*
5 *owning, or purchasing a firearm and that the person is not*
6 *prohibited from purchasing a firearm as described in subdivision*
7 *(a) of Section 27535, and the person possesses a firearm as*
8 *confirmed by the Automated Firearms System (AFS), is authorized*
9 *to carry a concealed firearm, or possesses a valid Certificate of*
10 *Eligibility and a firearm as confirmed by the AFS, the department*
11 *shall immediately notify the dealer who shall immediately release*
12 *the firearm to the person and not wait the full 10 days otherwise*
13 *required by Sections 26815 and 27540 to do so.*

14 (d) If the department determines that the copies of the register
15 submitted to it pursuant to subdivision (d) of Section 28210 contain
16 any blank spaces or inaccurate, illegible, or incomplete information,
17 preventing identification of the purchaser or the handgun or other
18 firearm to be purchased, or if any fee required pursuant to Section
19 28225 is not submitted by the dealer in conjunction with
20 submission of copies of the register, the department may notify
21 the dealer of that fact. Upon notification by the department, the
22 dealer shall submit corrected copies of the register to the
23 department, or shall submit any fee required pursuant to Section
24 28225, or both, as appropriate and, if notification by the department
25 is received by the dealer at any time prior to delivery of the firearm
26 to be purchased, the dealer shall withhold delivery until the
27 conclusion of the waiting period described in Sections 26815 and
28 27540.

29 (e) If the department determines that the information transmitted
30 to it pursuant to Section 28215 contains inaccurate or incomplete
31 information preventing identification of the purchaser or the
32 handgun or other firearm to be purchased, or if the fee required
33 pursuant to Section 28225 is not transmitted by the dealer in
34 conjunction with transmission of the electronic or telephonic
35 record, the department may notify the dealer of that fact. Upon
36 notification by the department, the dealer shall transmit corrections
37 to the record of electronic or telephonic transfer to the department,
38 or shall transmit any fee required pursuant to Section 28225, or
39 both, as appropriate, and if notification by the department is
40 received by the dealer at any time prior to delivery of the firearm

1 to be purchased, the dealer shall withhold delivery until the
2 conclusion of the waiting period described in Sections 26815 and
3 27540.

4 (f) (1) (A) The department shall immediately notify the dealer
5 to delay the transfer of the firearm to the purchaser if the records
6 of the department, or the records available to the department in
7 the National Instant Criminal Background Check System, indicate
8 one of the following:

9 (i) The purchaser has been taken into custody and placed in a
10 facility for mental health treatment or evaluation and may be a
11 person described in Section 8100 or 8103 of the Welfare and
12 Institutions Code and the department is unable to ascertain whether
13 the purchaser is a person who is prohibited from possessing,
14 receiving, owning, or purchasing a firearm, pursuant to Section
15 8100 or 8103 of the Welfare and Institutions Code, prior to the
16 conclusion of the waiting period described in Sections 26815 and
17 27540.

18 (ii) The purchaser has been arrested for, or charged with, a crime
19 that would make him or her, if convicted, a person who is
20 prohibited by state or federal law from possessing, receiving,
21 owning, or purchasing a firearm, and the department is unable to
22 ascertain whether the purchaser was convicted of that offense prior
23 to the conclusion of the waiting period described in Sections 26815
24 and 27540.

25 (iii) The purchaser may be a person described in subdivision
26 (a) of Section 27535, and the department is unable to ascertain
27 whether the purchaser, in fact, is a person described in subdivision
28 (a) of Section 27535, prior to the conclusion of the waiting period
29 described in Sections 26815 and 27540.

30 (B) The dealer shall provide the purchaser with information
31 about the manner in which he or she may contact the department
32 regarding the delay described in subparagraph (A).

33 (2) The department shall notify the purchaser by mail regarding
34 the delay and explain the process by which the purchaser may
35 obtain a copy of the criminal or mental health record the
36 department has on file for the purchaser. Upon receipt of that
37 criminal or mental health record, the purchaser shall report any
38 inaccuracies or incompleteness to the department on an approved
39 form.

1 (3) If the department ascertains the final disposition of the arrest
2 or criminal charge, or the outcome of the mental health treatment
3 or evaluation, or the purchaser's eligibility to purchase a firearm,
4 as described in paragraph (1), after the waiting period described
5 in Sections 26815 and 27540, but within 30 days of the dealer's
6 original submission of the purchaser information to the department
7 pursuant to this section, the department shall do the following:

8 (A) If the purchaser is not a person described in subdivision (a)
9 of Section 27535, and is not prohibited by state or federal law,
10 including, but not limited to, Section 8100 or 8103 of the Welfare
11 and Institutions Code, from possessing, receiving, owning, or
12 purchasing a firearm, the department shall immediately notify the
13 dealer of that fact and the dealer may then immediately transfer
14 the firearm to the purchaser, upon the dealer's recording on the
15 register or record of electronic transfer the date that the firearm is
16 transferred, the dealer signing the register or record of electronic
17 transfer indicating delivery of the firearm to that purchaser, and
18 the purchaser signing the register or record of electronic transfer
19 acknowledging the receipt of the firearm on the date that the
20 firearm is delivered to him or her.

21 (B) If the purchaser is a person described in subdivision (a) of
22 Section 27535, or is prohibited by state or federal law, including,
23 but not limited to, Section 8100 or 8103 of the Welfare and
24 Institutions Code, from possessing, receiving, owning, or
25 purchasing a firearm, the department shall immediately notify the
26 dealer and the chief of the police department in the city or city and
27 county in which the sale was made, or if the sale was made in a
28 district in which there is no municipal police department, the sheriff
29 of the county in which the sale was made, of that fact in compliance
30 with subdivision (c) of Section 28220.

31 (4) If the department is unable to ascertain the final disposition
32 of the arrest or criminal charge, or the outcome of the mental health
33 treatment or evaluation, or the purchaser's eligibility to purchase
34 a firearm, as described in paragraph (1), within 30 days of the
35 dealer's original submission of purchaser information to the
36 department pursuant to this section, the department shall
37 immediately notify the dealer and the dealer may then immediately
38 transfer the firearm to the purchaser, upon the dealer's recording
39 on the register or record of electronic transfer the date that the
40 firearm is transferred, the dealer signing the register or record of

1 electronic transfer indicating delivery of the firearm to that
2 purchaser, and the purchaser signing the register or record of
3 electronic transfer acknowledging the receipt of the firearm on the
4 date that the firearm is delivered to him or her.

5 SECTION 1. ~~Section 26815 of the Penal Code is amended to~~
6 ~~read:~~

7 ~~26815. A firearm shall not be delivered:~~

8 ~~(a) Within 10 days of the application to purchase, or, after notice~~
9 ~~by the department pursuant to Section 28220, within 10 days of~~
10 ~~the submission to the department of any correction to the~~
11 ~~application, or within 10 days of the submission to the department~~
12 ~~of any fee required pursuant to Section 28225, whichever is later.~~

13 ~~(b) Unless unloaded and securely wrapped or unloaded and in~~
14 ~~a locked container.~~

15 ~~(c) Unless the purchaser, transferee, or person being loaned the~~
16 ~~firearm presents clear evidence of the person's identity and age to~~
17 ~~the dealer.~~

18 ~~(d) Whenever the dealer is notified by the Department of Justice~~
19 ~~that the person is prohibited by state or federal law from processing,~~
20 ~~owning, purchasing, or receiving a firearm. The dealer shall make~~
21 ~~available to the person in the prohibited class a prohibited notice~~
22 ~~and transfer form, provided by the department, stating that the~~
23 ~~person is prohibited from owning or possessing a firearm, and that~~
24 ~~the person may obtain the reason for the prohibition from the~~
25 ~~department.~~