

AMENDED IN SENATE MAY 4, 2016
AMENDED IN SENATE AUGUST 18, 2015
AMENDED IN SENATE JULY 7, 2015
AMENDED IN ASSEMBLY JUNE 1, 2015
AMENDED IN ASSEMBLY APRIL 23, 2015
AMENDED IN ASSEMBLY APRIL 20, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1176

Introduced by Assembly Member ~~Perea~~ *Cooper*

February 27, 2015

~~An act to amend Section 44272 of, and to add Chapter 8.8 (commencing with Section 44269) to Part 5 of Division 26 of, the Health and Safety Code, relating to vehicular air pollution, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 490.2, 496, and 29805 of the Penal Code, relating to theft, and calling an election, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1176, as amended, ~~Perea~~ *Cooper*. ~~Vehicular air pollution. Theft: firearms.~~

(1) *The existing Safe Neighborhoods and Schools Act, enacted as an initiative statute by Proposition 47, as approved by the electors at the November 4, 2014, statewide general election, makes the theft of property that does not exceed \$950 in value petty theft, and makes that crime punishable as a misdemeanor, with certain exceptions.*

The California Constitution authorizes the Legislature to amend an initiative statute by another statute that becomes effective only when approved by the electors.

This bill would amend that initiative statute by making the theft of a firearm grand theft in all cases and punishable by imprisonment in the state prison for 16 months, or 2 or 3 years.

(2) Under existing law, a person who buys or receives property that has been stolen, knowing the property to be stolen, or who conceals, sells, withholds, or aids in concealing, selling, or withholding property from the owner, knowing the property to be stolen, is guilty of a misdemeanor or a felony, except that if the value of the property does not exceed \$950, Proposition 47 makes the offense punishable as a misdemeanor if the defendant has not previously been convicted of one or more specified serious or violent felonies or an offense requiring registration as a sex offender.

This bill would amend that initiative statute by making the buying or receiving of a stolen firearm, with knowledge that the property was stolen, or the concealing, selling, withholding, or aiding in concealing, selling, or withholding of a firearm, with knowledge that the property was stolen, a misdemeanor or a felony.

(3) Existing law generally prohibits a person who has been convicted of certain misdemeanors from possessing a firearm within 10 years of the conviction. Under existing law, a violation of this prohibition is a crime, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill would add to the list of misdemeanors, the conviction for which is subject to the above prohibition on possessing a firearm within 10 years of the conviction, the petty theft of a firearm and the buying, receiving, concealing, selling, withholding, or aiding in concealing, selling, or withholding, of stolen property consisting of a firearm, as specified. Because a violation of this provision would be a 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.

(4) This bill would call a special election to be consolidated with the November 8, 2016, statewide general election. This bill would require the Secretary of State to submit the provisions of the bill that amend the initiative statute, as described in (1) and (2) above, to the electors for their approval at the November 8, 2016, consolidated election.

This bill would declare that it is to take effect immediately as an act calling an election.

~~(1) Existing law establishes the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007, which includes the Alternative and Renewable Fuel and Vehicle Technology Program, administered by the State Energy Resources Conservation and Development Commission, and the Air Quality Improvement Program, administered by the State Air Resources Board. Existing law requires the emphasis of the Alternative and Renewable Fuel and Vehicle Technology Program to be to develop and deploy technology and alternative and renewable fuels in the marketplace, without adopting any one preferred fuel or technology. Existing law requires the primary purpose of the Air Quality Improvement Program to be the funding of projects to reduce criteria air pollutants, to improve air quality, and to fund research to determine and improve the air quality impacts of alternative transportation fuels and vehicles, vessels, and equipment technologies.~~

~~This bill would establish the Advanced Low-Carbon Diesel Fuels Access Program, to be administered by the commission, in consultation with the state board, for the purpose of reducing the greenhouse gas emissions of diesel motor vehicles by providing capital assistance for projects that expand advanced low-carbon diesel fueling infrastructure in communities that are disproportionately impacted by environmental hazards and additionally where the greatest air quality impacts can be identified.~~

~~This bill would authorize the commission as part of the Alternative and Renewable Fuel and Vehicle Technology Program to amend a contract, grant, loan, or other agreement or award to extend the terms of that contract, grant, loan, or other agreement or award by 2 years if the moneys are reprioritized by the commission to apply toward a project that provides benefits to disadvantaged communities.~~

~~(2) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. (a) *In submitting this act to the electors, the*
 2 *Legislature finds and declares all of the following:*

3 (1) *The theft of firearms and receipt of stolen firearms pose*
 4 *dangers to public safety that are different in kind from other types*
 5 *of theft or the receipt of other types of stolen property.*

6 (2) *Many handguns have a value of less than nine hundred fifty*
 7 *dollars (\$950). The threat to public safety in regard to stolen*
 8 *firearms goes above and beyond the monetary value of the firearm.*

9 (3) *Given the significant and particular threat to public safety*
 10 *in regard to stolen firearms, it is appropriate to restore the*
 11 *penalties that existed prior to the passage of the Safe*
 12 *Neighborhoods and Schools Act in regard to stolen firearms.*

13 (b) *It is not the intent of the Legislature in submitting this act*
 14 *to the electors to undermine the voter's decision to decrease*
 15 *penalties for low-level theft and receiving stolen property, only to*
 16 *give the voters the opportunity to decide whether firearm thefts*
 17 *and the receipt of stolen firearms should be subject to penalties*
 18 *that existed prior to the passage of the Safe Neighborhoods and*
 19 *Schools Act.*

20 SEC. 2. *Section 490.2 of the Penal Code is amended to read:*

21 490.2. (a) *Notwithstanding Section 487 or any other provision*
 22 *of law defining grand theft, except as provided in subdivision (c),*
 23 *obtaining any property by theft where the value of the money,*
 24 *labor, real property, or personal property taken does not exceed*
 25 *nine hundred fifty dollars (\$950) shall be considered is petty theft*
 26 *and shall be punished as a misdemeanor, except that such the*
 27 *person may instead be punished pursuant to subdivision (h) of*
 28 *Section 1170 if that person has one or more prior convictions for*
 29 *an offense specified in clause (iv) of subparagraph (C) of paragraph*
 30 *(2) of subdivision (e) of Section 667 or for an offense requiring*
 31 *registration pursuant to subdivision (c) of Section 290.*

32 (b) *This section shall does not be applicable apply to any a theft*
 33 *that may be charged as an infraction pursuant to any other provision*
 34 *of law.*

35 (c) *If the property taken is a firearm, the theft is grand theft in*
 36 *all cases, as specified in paragraph (2) of subdivision (d) of Section*
 37 *487, and is punishable pursuant to subdivision (a) of Section 489.*

38 SEC. 3. *Section 496 of the Penal Code is amended to read:*

1 496. (a) (1) Every person who buys or receives any property
 2 that has been stolen or that has been obtained in any manner
 3 constituting theft or extortion, knowing the property to be so stolen
 4 or obtained, or who conceals, sells, withholds, or aids in
 5 concealing, selling, or withholding any property from the owner,
 6 knowing the property to be so stolen or obtained, shall be punished
 7 by imprisonment in a county jail for not more than one year, or
 8 imprisonment pursuant to subdivision (h) of Section 1170.
 9 However, *except as provided in subdivision (e)*, if the value of the
 10 property does not exceed nine hundred fifty dollars (\$950), the
 11 offense ~~shall be~~ *is* a misdemeanor, punishable only by
 12 imprisonment in a county jail not exceeding one year, ~~if such the~~
 13 person has no prior convictions for an offense specified in clause
 14 (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of
 15 Section 667 or for an offense requiring registration pursuant to
 16 subdivision (c) of Section 290.

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18 (2) A principal in the actual theft of the property may be
 19 convicted pursuant to this section. However, ~~no~~ a person may *not*
 20 be convicted both pursuant to this section and of the theft of the
 21 same property.

22 (b) (1) Every swap meet vendor, as defined in Section 21661
 23 of the Business and Professions Code, and every person whose
 24 principal business is dealing in, or collecting, merchandise or
 25 personal property, and every agent, employee, or representative
 26 of that person, who buys or receives ~~any~~ property of a value in
 27 excess of nine hundred fifty dollars (\$950) that has been stolen or
 28 obtained in any manner constituting theft or extortion, under
 29 circumstances that should cause the person, agent, employee, or
 30 representative to make reasonable inquiry to ascertain that the
 31 person from whom the property was bought or received had the
 32 legal right to sell or deliver it, without making a reasonable inquiry,
 33 shall be punished by imprisonment in a county jail for not more
 34 than one year, or imprisonment pursuant to subdivision (h) of
 35 Section 1170.

36 ~~Every~~

37 (2) *Every* swap meet vendor, as defined in Section 21661 of the
 38 Business and Professions Code, and every person whose principal
 39 business is dealing in, or collecting, merchandise or personal
 40 property, and every agent, employee, or representative of that

1 person, who buys or receives~~any~~ property of a value of nine
2 hundred fifty dollars (\$950) or less that has been stolen or obtained
3 in any manner constituting theft or extortion, under circumstances
4 that should cause the person, agent, employee, or representative
5 to make reasonable inquiry to ascertain that the person from whom
6 the property was bought or received had the legal right to sell or
7 deliver it, without making a reasonable inquiry, shall be guilty of
8 a misdemeanor.

9 (c) ~~Any~~A person who has been injured by a violation of
10 subdivision (a) or (b) may bring an action for three times the
11 amount of actual damages, if any, sustained by the plaintiff, costs
12 of suit, and reasonable attorney's fees.

13 (d) Notwithstanding Section 664, ~~any~~ an attempt to commit any
14 act prohibited by this section, except an offense specified in the
15 accusatory pleading as a misdemeanor, is punishable by
16 imprisonment in a county jail for not more than one year, or by
17 imprisonment pursuant to subdivision (h) of Section 1170.

18 (e) *Notwithstanding subdivision (a), a person who buys or*
19 *receives a firearm that has been stolen or that has been obtained*
20 *in any manner constituting theft or extortion, knowing the property*
21 *to be so stolen or obtained, or who conceals, sells, withholds, or*
22 *aids in concealing, selling, or withholding a firearm from the*
23 *owner, knowing the property to be so stolen or obtained, shall be*
24 *punished by imprisonment in a county jail for not more than one*
25 *year, or imprisonment pursuant to subdivision (h) of Section 1170.*

26 *SEC. 4. Section 29805 of the Penal Code is amended to read:*

27 29805. Except as provided in Section 29855 or subdivision (a)
28 of Section 29800, any person who has been convicted of a
29 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
30 subdivision (d) of Section 148, Section 171b, paragraph (1) of
31 subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243,
32 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6,
33 422, 490.2 *if the property taken was a firearm, 496 if the property*
34 *consists of a firearm, 626.9, 646.9, or 830.95, subdivision (a) of*
35 *former Section 12100, as that section read at any time from when*
36 *it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988*
37 *to when it was repealed by Section 18 of Chapter 23 of the Statutes*
38 *of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625,*
39 *subdivision (b) or (d) of Section 26100, or Section 27510, or*
40 *Section 8100, 8101, or 8103 of the Welfare and Institutions Code,*

1 any firearm-related offense pursuant to Sections 871.5 and 1001.5
2 of the Welfare and Institutions Code, or of the conduct punished
3 in subdivision (c) of Section 27590, and who, within 10 years of
4 the conviction, owns, purchases, receives, or has in possession or
5 under custody or control, any firearm is guilty of a public offense,
6 which shall be punishable by imprisonment in a county jail not
7 exceeding one year or in the state prison, by a fine not exceeding
8 one thousand dollars (\$1,000), or by both that imprisonment and
9 fine. The court, on forms prescribed by the Department of Justice,
10 shall notify the department of persons subject to this section.
11 However, the prohibition in this section may be reduced,
12 eliminated, or conditioned as provided in Section 29855 or 29860.

13 *SEC. 5. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

22 *SEC. 6. (a) Sections 2 and 3 of this act amend the Safe*
23 *Neighborhoods and Schools Act, Proposition 47, an initiative*
24 *statute, and shall become effective only when submitted to and*
25 *approved by the voters at a statewide election.*

26 *(b) A special election is hereby called, to be held throughout*
27 *the state on November 8, 2016, for approval by the voters of*
28 *Sections 2 and 3 of this act. The special election shall be*
29 *consolidated with the statewide general election to be held on that*
30 *date. The consolidated election shall be held and conducted in all*
31 *respects as if there were only one election, and only one form of*
32 *ballot shall be used.*

33 *(c) Notwithstanding the requirements of Sections 9040, 9043,*
34 *9044, 9061, 9082, and 9094 of the Elections Code, or any other*
35 *law, the Secretary of State shall submit Sections 2 and 3 of this*
36 *act to the voters for their approval at the November 8, 2016,*
37 *statewide general election.*

38 *SEC. 7. This act calls an election within the meaning of Article*
39 *IV of the Constitution and shall go into immediate effect.*

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All matter omitted in this version of the bill appears in the bill as amended in the Senate, August 18, 2015. (JR11)

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