

ASSEMBLY BILL

No. 1674

Introduced by Assembly Member Santiago

January 19, 2016

An act to amend Sections 26835, 27535, 27540, and 27590 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1674, as introduced, Santiago. Firearms: waiting period.

Existing law, subject to exceptions, prohibits a person from making more than one application to purchase a handgun within any 30-day period. Violation of that prohibition is a crime. Existing law exempts from that prohibition a firearms transaction where neither of the parties is a firearms dealer if the transaction is completed through a dealer. Existing law prohibits a firearms dealer from delivering a handgun to a person whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a handgun that does not fall within an exception to the 30-day prohibition. A violation of that delivery prohibition by the dealer is a crime.

This bill would make the 30-day prohibition and the dealer delivery prohibition described above applicable to all types of firearms. The bill would delete the private party transaction exemption to the 30-day prohibition. The bill would make additional conforming changes and technical, nonsubstantive changes.

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 26835 of the Penal Code is amended to
2 read:

3 26835. A licensee shall post conspicuously within the licensed
4 premises the following warnings in block letters not less than one
5 inch in height:

6
7 (a) "IF YOU KEEP A LOADED FIREARM WITHIN ANY
8 PREMISES UNDER YOUR CUSTODY OR CONTROL, AND
9 A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND
10 USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES
11 IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A
12 MISDEMEANOR OR A FELONY UNLESS YOU STORED
13 THE FIREARM IN A LOCKED CONTAINER OR LOCKED
14 THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT
15 FROM TEMPORARILY FUNCTIONING."

16 (b) "IF YOU KEEP A PISTOL, REVOLVER, OR OTHER
17 FIREARM CAPABLE OF BEING CONCEALED UPON THE
18 PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY
19 OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE
20 GAINS ACCESS TO THE FIREARM, AND CARRIES IT
21 OFF-PREMISES, YOU MAY BE GUILTY OF A
22 MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN
23 A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH
24 A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY
25 FUNCTIONING."

26 (c) "IF YOU KEEP ANY FIREARM WITHIN ANY
27 PREMISES UNDER YOUR CUSTODY OR CONTROL, AND
28 A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO
29 THE FIREARM, AND CARRIES IT OFF-PREMISES TO A
30 SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE

1 GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP
2 TO FIVE THOUSAND DOLLARS (\$5,000), UNLESS YOU
3 STORED THE FIREARM IN A LOCKED CONTAINER, OR
4 LOCKED THE FIREARM WITH A LOCKING DEVICE.”

5 (d) “IF YOU NEGLIGENTLY STORE OR LEAVE A
6 LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR
7 CUSTODY OR CONTROL, WHERE A PERSON UNDER 18
8 YEARS OF AGE IS LIKELY TO ACCESS IT, YOU MAY BE
9 GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP
10 TO ONE THOUSAND DOLLARS (\$1,000), UNLESS YOU
11 STORED THE FIREARM IN A LOCKED CONTAINER, OR
12 LOCKED THE FIREARM WITH A LOCKING DEVICE.”

13 (e) “DISCHARGING FIREARMS IN POORLY VENTILATED
14 AREAS, CLEANING FIREARMS, OR HANDLING
15 AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A
16 SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS,
17 REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL
18 INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES.
19 WASH HANDS THOROUGHLY AFTER EXPOSURE.”

20 (f) “FEDERAL REGULATIONS PROVIDE THAT IF YOU
21 DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM
22 THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30
23 DAYS AFTER YOU COMPLETE THE INITIAL
24 BACKGROUND CHECK PAPERWORK, THEN YOU HAVE
25 TO GO THROUGH THE BACKGROUND CHECK PROCESS
26 A SECOND TIME IN ORDER TO TAKE PHYSICAL
27 POSSESSION OF THAT FIREARM.”

28 (g) “NO PERSON SHALL MAKE AN APPLICATION TO
29 PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR
30 ~~OTHER FIREARM CAPABLE OF BEING CONCEALED UPON~~
31 ~~THE PERSON FIREARM~~ WITHIN ANY 30-DAY PERIOD AND
32 NO DELIVERY SHALL BE MADE TO ANY PERSON WHO
33 HAS MADE AN APPLICATION TO PURCHASE MORE THAN
34 ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE
35 OF BEING CONCEALED UPON THE PERSON FIREARM
36 WITHIN ANY 30-DAY PERIOD.”

37
38 SEC. 2. Section 27535 of the Penal Code is amended to read:
39 27535. (a) ~~No~~A person shall *not* make an application to
40 purchase more than one ~~handgun~~ *firearm* within any 30-day period.

1 (b) Subdivision (a) ~~shall~~ *does* not apply to any of the following:

2 (1) Any law enforcement agency.

3 (2) Any agency duly authorized to perform law enforcement
4 duties.

5 (3) Any state or local correctional facility.

6 (4) Any private security company licensed to do business in
7 California.

8 (5) Any person who is properly identified as a full-time paid
9 peace officer, as defined in Chapter 4.5 (commencing with Section
10 830) of Title 3 of Part 2, and who is authorized to, and ~~does~~ *does*,
11 carry a firearm during the course and scope of employment as a
12 peace officer.

13 (6) Any motion picture, television, or video production company
14 or entertainment or theatrical company whose production by its
15 nature involves the use of a firearm.

16 (7) Any person who may, pursuant to Article 2 (commencing
17 with Section 27600), Article 3 (commencing with Section 27650),
18 or Article 4 (commencing with Section 27700), claim an exemption
19 from the waiting period set forth in Section 27540.

20 ~~(8) Any transaction conducted through a licensed firearms dealer
21 pursuant to Chapter 5 (commencing with Section 28050).~~

22 ~~(9)~~

23 (8) Any person who is licensed as a collector pursuant to Chapter
24 44 (commencing with Section 921) of Title 18 of the United States
25 Code and the regulations issued pursuant thereto, and has a current
26 certificate of eligibility issued by the Department of Justice
27 pursuant to Article 1 (commencing with Section 26700) of Chapter
28 2.

29 ~~(10)~~

30 (9) The exchange of a ~~handgun~~ *firearm* where the dealer
31 purchased that firearm from the person seeking the exchange within
32 the 30-day period immediately preceding the date of exchange or
33 replacement.

34 ~~(11)~~

35 (10) The replacement of a ~~handgun~~ *firearm* when the person's
36 ~~handgun~~ *firearm* was lost or stolen, and the person reported that
37 firearm lost or stolen prior to the completion of the application to
38 purchase to any local law enforcement agency of the city, county,
39 or city and county in which the person resides.

40 ~~(12)~~

1 (11) The return of any ~~handgun~~ *firearm* to its owner.

2 ~~(13)~~

3 (12) A community college that is certified by the Commission
4 on Peace Officer Standards and Training to present the law
5 enforcement academy basic course or other commission-certified
6 law enforcement training.

7 SEC. 3. Section 27540 of the Penal Code is amended to read:

8 27540. A dealer, whether or not acting pursuant to Chapter 5
9 (commencing with Section 28050), shall not deliver a firearm to
10 a person, as follows:

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

16 (b) Unless unloaded and securely wrapped or unloaded and in
17 a locked container.

18 (c) Unless the purchaser, transferee, or person being loaned the
19 firearm presents clear evidence of the person's identity and age to
20 the dealer.

21 (d) Whenever the dealer is notified by the Department of Justice
22 that the person is prohibited by state or federal law from possessing,
23 receiving, owning, or purchasing a firearm.

24 (e) A handgun shall not be delivered unless the purchaser,
25 transferee, or person being loaned the handgun presents a handgun
26 safety certificate. Commencing January 1, 2015, any firearm,
27 including a handgun, shall not be delivered unless the purchaser,
28 transferee, or person being loaned the firearm presents a firearm
29 safety certificate to the dealer, except that in the case of a handgun,
30 an unexpired handgun safety certificate may be presented.

31 (f) A ~~handgun~~ *firearm* shall not be delivered whenever the
32 dealer is notified by the Department of Justice that within the
33 preceding 30-day period the purchaser has made another
34 application to purchase a ~~handgun~~ *firearm* and that the previous
35 application to purchase ~~involved none~~ *did not involve any* of the
36 entities *or circumstances* specified in subdivision (b) of Section
37 27535.

38 SEC. 4. Section 27590 of the Penal Code is amended to read:

39 27590. (a) Except as provided in subdivision (b), (c), or (e),
40 a violation of this article is a misdemeanor.

1 (b) If any of the following circumstances apply, a violation of
2 this article is punishable by imprisonment pursuant to subdivision
3 (h) of Section 1170 for two, three, or four ~~years~~ years:

- 4 (1) If the violation is of subdivision (a) of Section 27500.
 - 5 (2) If the defendant has a prior conviction of violating the
6 provisions, other than Section 27535, Section 27560 involving a
7 firearm that is not a handgun, or Section 27565 involving a firearm
8 that is not a handgun, of this article or former Section 12100 of
9 this code, as Section 12100 read at any time from when it was
10 enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to
11 when it was repealed by Section 18 of Chapter 23 of the Statutes
12 of 1994, or Section 8101 of the Welfare and Institutions Code.
 - 13 (3) If the defendant has a prior conviction of violating any
14 offense specified in Section 29905 or of a violation of Section
15 32625 or 33410, or of former Section 12560, as that section read
16 at any time from when it was enacted by Section 4 of Chapter 931
17 of the Statutes of 1965 to when it was repealed by Section 14 of
18 Chapter 9 of the Statutes of 1990, or of any provision listed in
19 Section 16590.
 - 20 (4) If the defendant is in a prohibited class described in Chapter
21 2 (commencing with Section 29800) or Chapter 3 (commencing
22 with Section 29900) of Division 9 ~~of this title~~, or Section 8100 or
23 8103 of the Welfare and Institutions Code.
 - 24 (5) A violation of this article by a person who actively
25 participates in a “criminal street gang” as defined in Section 186.22.
 - 26 (6) A violation of Section 27510 involving the delivery of any
27 firearm to a person who the dealer knows, or should know, is a
28 minor.
- 29 (c) If any of the following circumstances apply, a violation of
30 this article shall be punished by imprisonment in a county jail not
31 exceeding one year or pursuant to subdivision (h) of Section 1170,
32 or by a fine not to exceed one thousand dollars (\$1,000), or by
33 both that fine and ~~imprisonment~~ imprisonment:
- 34 (1) A violation of Section 27515, 27520, or subdivision (b) of
35 Section 27500.
 - 36 (2) A violation of Section 27505 involving the sale, loan, or
37 transfer of a handgun to a minor.
 - 38 (3) A violation of Section 27510 involving the delivery of a
39 handgun.

1 (4) A violation of subdivision (a), (c), (d), (e), or (f) of Section
2 27540 involving a handgun.

3 (5) A violation of Section 27545 involving a handgun.

4 (6) A violation of Section 27550.

5 (7) A violation of Section 27585 involving a handgun.

6 (d) If both of the following circumstances apply, an additional
7 term of imprisonment pursuant to subdivision (h) of Section 1170
8 for one, two, or three years shall be imposed in addition and
9 consecutive to the sentence ~~prescribed~~: *prescribed*:

10 (1) A violation of Section 27510 or subdivision (b) of Section
11 27500.

12 (2) The firearm transferred in violation of Section 27510 or
13 subdivision (b) of Section 27500 is used in the subsequent
14 commission of a felony for which a conviction is obtained and the
15 prescribed sentence is imposed.

16 (e) (1) A first violation of Section 27535 is an infraction
17 punishable by a fine of fifty dollars (\$50).

18 (2) A second violation of Section 27535 is an infraction
19 punishable by a fine of one hundred dollars (\$100).

20 (3) A third or subsequent violation of Section 27535 is a
21 misdemeanor.

22 (4) For purposes of this subdivision each application to purchase
23 a ~~handgun~~ *firearm* in violation of Section 27535 shall be deemed
24 a separate offense.

25 SEC. 5. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.