

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1446**

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**Introduced by Senator Hancock**  
*(Coauthors: Senators Hall and Leno)*  
*(Coauthor: Assembly Member Bonta)*

February 19, 2016

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An act to amend Sections ~~16350, 16740, 32310, 32400, 32405, 32410, 32425, 32430, 32435, and 32450~~ of, ~~and~~ to add Section 32406 to, *and to repeal Section 32420 of*, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1446, as amended, Hancock. Firearms: magazine capacity.

~~(1) Existing law, for purposes pertaining to the ammunition capacity of certain assault weapons, defines "capacity to accept more than 10 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 revise that definition to mean capable of holding more than 10 rounds of ammunition, but not applying to a feeding device that has been permanently altered so that it cannot hold more than 10 rounds of ammunition.~~

~~(2)~~

~~(1) Existing law prohibits the sale, gift, and loan of a large-capacity magazine. A violation of this prohibition is punishable as a misdemeanor with specified penalties or as a felony. 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 of ammunition 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 size to hold no more than 10 rounds of ammunition. The bill would, commencing July 1, 2017, make it an infraction punishable by a fine not to exceed \$100 for the first offense, by a fine not to exceed \$250 for the second *2nd* offense, ~~or and~~ by a fine not to exceed \$1,000 *\$500* for the third *3rd* or subsequent offense, ~~or a misdemeanor punishable by a fine not to exceed \$100 for the first offense, by a fine not to exceed \$250 for the second offense, or by a fine not to exceed \$1,000 for the third or subsequent offense,~~ for a person to possess any large-capacity magazine, regardless of the date the magazine was acquired. The bill would require a person in lawful possession of a large-capacity magazine prior to July 1, 2017, to dispose of the magazine, as provided.

By creating a new crime, this bill would impose a state-mandated local program.

(3)

(2) Existing law creates various exceptions to the crime described in paragraph ~~(2)~~ (1) above, 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 the holder of a special weapons permit for use as a prop for a motion picture, or 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 to those exceptions by including possession of a large-capacity magazine in those ~~provisions~~ *provisions and would establish additional exceptions to the crime described in paragraph (1) above, including exceptions to allow licensed gunsmiths and honorably retired sworn peace officers to possess a large-capacity magazine.*

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.~~ As used in Section 30515, “capacity to accept more  
4 than 10 rounds” means capable of holding more than 10 rounds  
5 of ammunition. The phrase does not apply to a feeding device that  
6 has been permanently altered so that it cannot hold more than 10  
7 rounds of ammunition.

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

9     ~~16740.~~ (a) As used in this part, “large-capacity magazine”  
10 means any ammunition feeding device with the capacity to accept  
11 more than 10 rounds. As used in this part, “large-capacity  
12 magazine” also includes a feeding device that had a capacity of  
13 more than 10 rounds of ammunition but has been permanently  
14 altered to hold no more than 10 rounds of ammunition.

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

17     ~~(1)~~ A magazine that is only of sufficient size to hold no more  
18 than 10 rounds of ammunition.

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

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

22     ~~SEC. 3.~~

23     ~~SECTION 1.~~ Section 32310 of the Penal Code is amended to  
24 read:

25     ~~32310.~~ (a) Except as provided in Article 2 (commencing with  
26 Section 32400) of this chapter and in Chapter 1 (commencing with  
27 Section 17700) of Division 2 of Title 2, any person in this state  
28 who manufactures or causes to be manufactured, imports into the  
29 state, keeps for sale, or offers or exposes for sale, or who gives,  
30 or lends, *buys, or receives* any large-capacity magazine is  
31 punishable by imprisonment in a county jail not exceeding one  
32 year or imprisonment pursuant to subdivision (h) of Section 1170.

1 (b) Except as provided in Article 2 (commencing with Section  
2 32400) of this chapter and in Chapter 1 (commencing with Section  
3 17700) of Division 2 of Title 2, commencing July 1, 2017, any  
4 person in this state who possesses any large-capacity magazine,  
5 regardless of the date the magazine was acquired, is guilty of an  
6 infraction punishable by a fine not to exceed one hundred dollars  
7 (\$100) upon the first offense, by a fine not to exceed two hundred  
8 fifty dollars (\$250) upon the second offense, and by a fine not to  
9 exceed ~~one thousand dollars (\$1,000) upon the third or any~~  
10 ~~subsequent offense, or is guilty of a misdemeanor punishable by~~  
11 ~~a fine not to exceed one hundred dollars (\$100) upon the first~~  
12 ~~offense, by a fine not to exceed two hundred fifty dollars (\$250)~~  
13 ~~upon the second offense, and by a fine not to exceed one thousand~~  
14 ~~dollars (\$1,000) five hundred dollars (\$500) upon the third or~~  
15 subsequent offense.

16 (c) A person who, prior to July 1, 2017, legally possesses a  
17 large-capacity magazine shall dispose of that magazine by any of  
18 the following means:

- 19 (1) Remove the large-capacity magazine from the state.
- 20 (2) Prior to July 1, 2017, sell the large-capacity magazine to a  
21 licensed firearms dealer.
- 22 (3) Destroy the large-capacity magazine.
- 23 (4) Surrender the large-capacity magazine to a law enforcement  
24 agency for destruction.

25 (d) For purposes of this section, “manufacturing” includes both  
26 fabricating a magazine and assembling a magazine from a  
27 combination of parts, including, but not limited to, the body, spring,  
28 follower, and floor plate or end plate, to be a fully functioning  
29 large-capacity magazine.

30 (e) *The provisions of this section are cumulative and shall not*  
31 *be construed as restricting the application of any other law.*  
32 *However, an act or omission punishable in different ways by*  
33 *different provisions of this code shall not be punished under more*  
34 *than one provision.*

35 ~~SEC. 4.~~

36 *SEC. 2.* Section 32400 of the Penal Code is amended to read:  
37 32400. Section 32310 does not apply to the sale of, giving of,  
38 lending of, possession of, importation into this state of, or purchase  
39 of, any large-capacity magazine to or by any federal, state, county,  
40 city and county, or city agency that is charged with the enforcement

1 of any law, for use by agency employees in the discharge of their  
2 official duties, whether on or off duty, and where the use is  
3 authorized by the agency and is within the course and scope of  
4 their duties.

5 ~~SEC. 5.~~

6 *SEC. 3.* Section 32405 of the Penal Code is amended to read:

7 32405. Section 32310 does not apply to the sale to, lending to,  
8 transfer to, purchase by, receipt of, possession of, or importation  
9 into this state of, a large-capacity magazine by a sworn peace  
10 officer, as defined in Chapter 4.5 (commencing with Section 830)  
11 of Title 3 of Part 2, or a sworn federal law enforcement officer  
12 who is authorized to carry a firearm in the course and scope of that  
13 officer's duties.

14 ~~SEC. 6.~~

15 *SEC. 4.* Section 32406 is added to the Penal Code, to read:

16 32406. Subdivisions (b) and (c) of Section 32310 do not apply  
17 to ~~an~~ *the following*:

18 (a) *An individual who honorably retired from being a sworn*  
19 *peace officer, as defined in Chapter 4.5 (commencing with Section*  
20 *830) of Title 3 of Part 2, or an individual who honorably retired*  
21 *from being a sworn federal law enforcement officer, who was*  
22 *authorized to carry a firearm in the course and scope of that*  
23 *officer's duties. For purposes of this section, "honorably retired"*  
24 *has the same meaning as provided in Section 16690.*

25 (b) *A federal, state, or local historical society, museum or*  
26 *institutional society, or museum or institutional collection, that is*  
27 *open to the public, provided that the large-capacity magazine is*  
28 *unloaded, properly housed within secured premises, and secured*  
29 *from unauthorized handling.*

30 (c) *A person who finds a large-capacity magazine, if the person*  
31 *is not prohibited from possessing firearms or ammunition, and*  
32 *possessed it no longer than necessary to deliver or transport it to*  
33 *the nearest law enforcement agency.*

34 (d) *A forensic laboratory, or an authorized agent or employee*  
35 *thereof in the course and scope of his or her authorized activities.*

36 (e) *The receipt or disposition of a large-capacity magazine by*  
37 *a trustee of a trust, or an executor or administrator of an estate,*  
38 *including an estate that is subject to probate, that includes a*  
39 *large-capacity magazine.*

1 (f) A person lawfully in possession of a firearm that the person  
2 obtained prior to January 1, 2000, if no magazine that holds 10  
3 or fewer rounds of ammunition is compatible with that firearm  
4 and the person possesses the large-capacity magazine solely for  
5 use with that firearm.

6 SEC. 5. Section 32410 of the Penal Code is amended to read:  
7 32410. Section 32310 does not apply to the ~~sale~~ possession,  
8 sale, or purchase of any large-capacity magazine to or by a person  
9 licensed pursuant to Sections 26700 to 26915, inclusive.

10 SEC. 6. Section 32420 of the Penal Code is repealed.  
11 ~~32420. Section 32310 does not apply to the importation of a~~  
12 ~~large-capacity magazine by a person who lawfully possessed the~~  
13 ~~large-capacity magazine in the state prior to January 1, 2000,~~  
14 ~~lawfully took it out of the state, and is returning to the state with~~  
15 ~~the same large-capacity magazine.~~

16 SEC. 7. Section 32425 of the Penal Code is amended to read:  
17 32425. Section 32310 does not apply to either of the following:

18 (a) The lending or giving of any large-capacity magazine ~~to~~ to,  
19 or possession of that magazine by, a person licensed pursuant to  
20 Sections 26700 to 26915, inclusive, or to a gunsmith, for the  
21 purposes of maintenance, repair, or modification of that  
22 large-capacity magazine.

23 (b) The return to its owner of any large-capacity magazine by  
24 a person specified in subdivision (a).

25 SEC. 8. Section 32430 of the Penal Code is amended to read:  
26 32430. Section 32310 does not apply to the possession of,  
27 importation into this state of, or sale of, any large-capacity  
28 magazine by a person who has been issued a permit to engage in  
29 those activities pursuant to Section 32315, when those activities  
30 are in accordance with the terms and conditions of that permit.

31 ~~SEC. 7.~~

32 SEC. 9. Section 32435 of the Penal Code is amended to read:  
33 32435. Section 32310 does not apply to any of the following:

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

38 (b) The lending of large-capacity magazines by an entity  
39 specified in subdivision (a) to its authorized employees, and the  
40 possession of those large-capacity magazines by those authorized

1 employees, while in the course and scope of employment for  
2 purposes that pertain to the entity’s armored vehicle business.

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

6 ~~SEC. 8.~~

7 *SEC. 10.* Section 32450 of the Penal Code is amended to read:

8 32450. Section 32310 does not apply to the purchase or  
9 possession of a large-capacity magazine by the holder of a special  
10 weapons permit issued pursuant to Section 31000, 32650, or 33300,  
11 or pursuant to Article 3 (commencing with Section 18900) of  
12 Chapter 1 of Division 5 of Title 2, or pursuant to Article 4  
13 (commencing with Section 32700) of Chapter 6 of this division,  
14 for any of the following purposes:

15 (a) For use solely as a prop for a motion picture, television, or  
16 video production.

17 (b) For export pursuant to federal regulations.

18 (c) For resale to law enforcement agencies, government  
19 agencies, or the military, pursuant to applicable federal regulations.

20 ~~SEC. 9.~~

21 *SEC. 11.* No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.