

AMENDED IN ASSEMBLY APRIL 3, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 477

Introduced by Assembly Member Leonard

February 24, 1997

An act to amend Section 12101 of the Health and Safety Code, and to amend Sections 453 and 12302 of the Penal Code, relating to explosives.

LEGISLATIVE COUNSEL'S DIGEST

AB 477, as amended, Leonard. Explosives: incendiary device: permits.

(1) Under existing law, a person is required to apply for and obtain a permit to manufacture, sell, receive, store, possess, transport, or use explosives. Existing law prohibits the issuance of this permit to any person prohibited from owning or having in his or her possession or control any firearm and any person convicted of specified offenses.

This bill would require the issuing authority, for purposes of determining whether a person meets the prescribed criteria for denial of a permit, to obtain fingerprints from all persons applying for a permit pursuant to these provisions and to submit the fingerprints to the Department of Justice. The bill also would require the department to make inquiries regarding the criminal background of applicants for a permit. By imposing new duties on local governmental agencies, this bill would impose a state-mandated local program.

(2) Existing law makes it a misdemeanor or a felony for any person to possess any flammable, explosive, or combustible material or substance, or any device in an arrangement or preparation, with intent to willfully and maliciously use this material, substance, or device to set fire to or burn any structure, forest land, or property. Existing law also makes it a felony to possess, manufacture, or dispose of a firebomb.

This bill would recast these provisions by deleting the provisions related to a “firebomb” and incorporating “incendiary device,” as defined. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(3) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 12101 of the Health and Safety
- 2 Code is amended to read:
- 3 12101. (a) No person shall do any one of the following
- 4 without first having made application for and received a
- 5 permit in accordance with this section:
- 6 (1) Manufacture explosives.
- 7 (2) Sell, furnish, or give away explosives.



1 (3) Receive, store, or possess explosives.

2 (4) Transport explosives.

3 (5) Use explosives.

4 (6) Operate a terminal for handling explosives.

5 (7) Park or leave standing any vehicle carrying
6 explosives, except when parked or left standing in or at
7 a safe stopping place designated as such by the
8 Department of the California Highway Patrol under
9 Division 14 (commencing with Section 31600) of the
10 Vehicle Code.

11 (b) Application for a permit shall be made to the
12 appropriate issuing authority.

13 (c) (1) A permit shall be obtained from the issuing
14 authority having the responsibility in the area where the
15 activity, as specified in subdivision (a), is to be conducted.

16 (2) If the person holding a valid permit for the use or
17 storage of explosives desires to purchase or receive
18 explosives in a jurisdiction other than that of intended use
19 or storage, the person shall first present the permit to the
20 issuing authority in the jurisdiction of purchase or receipt
21 for endorsement. The issuing authority may include any
22 reasonable restrictions or conditions which the authority
23 finds necessary for the prevention of fire and explosion,
24 the preservation of life, safety, or the control and security
25 of explosives within the authority's jurisdiction. If, for any
26 reason, the issuing authority refuses to endorse the permit
27 previously issued in the area of intended use or storage,
28 the authority shall immediately notify both the issuing
29 authority who issued the permit and the Department of
30 Justice of the fact of the refusal and the reasons for the
31 refusal.

32 (3) Every person who sells, gives away, delivers, or
33 otherwise disposes of explosives to another person shall
34 first be satisfied that the person receiving the explosives
35 has a permit valid for that purpose. When the permit to
36 receive explosives indicates that the intended storage or
37 use of the explosives is other than in that area in which the
38 permittee receives the explosives, the person who sells,
39 gives away, delivers, or otherwise disposes of the
40 explosives shall insure that the permit has been properly



1 endorsed by a local issuing authority and, further, shall
2 immediately send a copy of the record of sale to the
3 issuing authority who originally issued the permit in the
4 area of intended storage or use. The issuing authority in
5 the area in which the explosives are received or sold shall
6 not issue a permit for the possession, use, or storage of
7 explosives in an area not within the authority's
8 jurisdiction.

9 (d) In the event any person desires to receive
10 explosives for use in an area outside of this state, a permit
11 to receive the explosives shall be obtained from the State
12 Fire Marshal.

13 (e) A permit may include any restrictions or
14 conditions which the issuing authority finds necessary for
15 the prevention of fire and explosion, the preservation of
16 life, safety, or the control and security of explosives.

17 (f) A permit shall remain valid only until the time
18 when the act or acts authorized by the permit are
19 performed, but in no event shall the permit remain valid
20 for a period longer than one year from the date of
21 issuance of the permit.

22 (g) Any valid permit which authorizes the
23 performance of any act shall not constitute authorization
24 for the performance of any act not stipulated in the
25 permit.

26 (h) An issuing authority shall not issue a permit
27 authorizing the transportation of explosives pursuant to
28 this section if the display of placards for that
29 transportation is required by Section 27903 of the Vehicle
30 Code, unless the driver possesses a license for the
31 transportation of hazardous materials issued pursuant to
32 Division 14.1 (commencing with Section 32000) of the
33 Vehicle Code, or the explosives are a hazardous waste or
34 extremely hazardous waste, as defined in Sections 25117
35 and 25115 of the Health and Safety Code, and the
36 transporter is currently registered as a hazardous waste
37 hauler pursuant to Section 25163 of the Health and Safety
38 Code.

39 (i) An issuing authority shall not issue a permit
40 pursuant to this section authorizing the handling or



1 storage of class A or B explosives in a building, unless the
2 building has caution placards which meet the standards
3 established pursuant to subdivision (g) of Section 12081.

4 (j) (1) A permit shall not be issued to a person who
5 meets any of the following criteria:

6 (A) He or she has been convicted of a felony.

7 (B) He or she is addicted to a narcotic drug.

8 (C) He or she is in a class prohibited by Section 8100
9 or 8103 of the Welfare and Institutions Code or Section
10 12021 or 12021.1 of the Penal Code.

11 (2) For purposes of determining whether a person
12 meets any of the criteria set forth in this subdivision, the
13 issuing authority shall obtain fingerprints on prescribed
14 cards from all persons applying for a permit under this
15 section and shall submit these cards to the Department of
16 Justice. The Department of Justice shall utilize the
17 fingerprint cards to make inquiries both within this state
18 and to the Federal Bureau of Investigation regarding the
19 criminal history of the applicant identified on the
20 fingerprint card.

21 This paragraph does not apply to any person possessing
22 a current certificate of eligibility issued pursuant to
23 paragraph (4) of subdivision (a) of Section 12071.

24 (k) An issuing authority shall inquire with the
25 Department of Justice for the purposes of determining
26 whether a person who is applying for a permit meets any
27 of the criteria specified in subdivision (j). The
28 Department of Justice shall determine whether a person
29 who is applying for a permit meets any of the criteria
30 specified in subdivision (j) and shall either grant or deny
31 clearance for a permit to be issued pursuant to the
32 determination. The Department of Justice shall not
33 disclose the contents of a person's records to any person
34 who is not authorized to receive the information in order
35 to ensure confidentiality.

36 SEC. 2. Section 453 of the Penal Code is amended to
37 read:

38 453. (a) Every person who possesses, manufactures,
39 or disposes of any flammable, or combustible material or
40 substance, or any incendiary device in an arrangement or



1 preparation, with intent to willfully and maliciously use
2 this material, substance, or device to set fire to or burn
3 any structure, forest land, or property, shall be punished
4 by imprisonment in the state prison, or in a county jail, not
5 exceeding one year.

6 (b) For the purposes of this section, “disposes of”
7 means to give, give away, loan, offer, offer for sale, sell, or
8 transfer.

9 For the purposes of this section, an “incendiary device”
10 is a device that is constructed or designed to start a fire
11 by remote, delayed, or instant means, but no device
12 commercially manufactured primarily for the purpose of
13 illumination shall be deemed to be an incendiary device
14 for the purposes of this section.

15 (c) Subdivisions (a) and (b) do not prohibit the
16 authorized use or possession of any material, substance or
17 device described therein by a member of the armed
18 forces of the United States or by firemen, police officers,
19 peace officers, or law enforcement officers authorized by
20 the properly constituted authorities; nor do those
21 subdivisions prohibit the use or possession of any material,
22 substance or device described therein when used solely
23 for scientific research or educational purposes, or for
24 disposal of brush under permit as provided for in Section
25 4494 of the Public Resources Code, or for any other lawful
26 burning. Subdivision (b) does not prohibit the
27 manufacture or disposal of an incendiary device for the
28 parties or purposes described in this subdivision.

29 SEC. 3. Section 12302 of the Penal Code is amended
30 to read:

31 12302. Nothing in this chapter shall prohibit the sale
32 to, purchase by, ~~possession~~ of or possession,
33 transportation, storage, or use of, destructive devices or
34 explosives by:

35 (a) Any peace officer listed in Section 830.1 or 830.2, or
36 any peace officer in the Department of Justice authorized
37 by the Attorney General, while on duty and acting within
38 the scope and course of his or her employment.

39 (b) Any member of the Army, Navy, Air Force, or
40 Marine Corps of the United States, or the National Guard,



1 while on duty and acting within the scope and course of
2 his or her employment.

3 Nothing in this chapter prohibits the sale ~~to, purchase~~
4 ~~by, possession by, transportation of, or use by~~ *to, or the*
5 *purchase, possession, transportation, storage, or use by*
6 any person who is a regularly employed and paid officer,
7 employee, or member of a fire department or fire
8 protection or firefighting agency of the federal
9 government, the State of California, a city, county, city
10 and county, district, or other public or municipal
11 corporation or political subdivision of this state, while on
12 duty and acting within the scope and course of his or her
13 employment, of any equipment used by that department
14 or agency in the course of fire suppression.

15 SEC. 4. No reimbursement is required by this act
16 pursuant to Section 6 of Article XIII B of the California
17 Constitution for certain costs that may be incurred by a
18 local agency or school district because in that regard this
19 act creates a new crime or infraction, eliminates a crime
20 or infraction, or changes the penalty for a crime or
21 infraction, within the meaning of Section 17556 of the
22 Government Code, or changes the definition of a crime
23 within the meaning of Section 6 of Article XIII B of the
24 California Constitution.

25 However, notwithstanding Section 17610 of the
26 Government Code, if the Commission on State Mandates
27 determines that this act contains other costs mandated by
28 the state, reimbursement to local agencies and school
29 districts for those costs shall be made pursuant to Part 7
30 (commencing with Section 17500) of Division 4 of Title
31 2 of the Government Code. If the statewide cost of the
32 claim for reimbursement does not exceed one million
33 dollars (\$1,000,000), reimbursement shall be made from
34 the State Mandates Claims Fund.

35 Notwithstanding Section 17580 of the Government
36 Code, unless otherwise specified, the provisions of this act
37 shall become operative on the same date that the act
38 takes effect pursuant to the California Constitution.

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