

AMENDED IN ASSEMBLY APRIL 5, 1999
AMENDED IN ASSEMBLY MARCH 18, 1999
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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 106

Introduced by Assembly Members Scott and Aroner and

Senator Hayden

(Principal coauthor: Assembly Member Villaraigosa)

**(Coauthors: Assembly Members Davis, Dutra, Havice,
Hertzberg, Jackson, Keeley, Knox, Kuehl, Lempert,
Longville, Romero, Shelley, Steinberg, Washington,
Wesson, and Wildman)**

(Coauthors: Senators Alpert, Figueroa, Perata, and Solis)

December 22, 1998

An act to add Article 4.5 (commencing with Section 12087) to Chapter 4 of Title 2 of Part 4 of the Penal Code, relating to firearm safety devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 106, as amended, Scott. Firearms: safety devices.

Existing law generally regulates the transfer and possession of firearms.

This bill would establish the Aroner-Scott-Hayden Firearms Safety Act of 1999 (the act).

This bill would require that, effective January 1, 2002, all firearms sold or transferred in this state, or manufactured in

this state, be accompanied by a firearms safety device approved by the Department of Justice.

This bill would require the Attorney General, not later than January 1, 2000, to begin development of minimum safety standards for firearms safety devices that are designed to reduce the risk of unintentional injury by firearms. The bill would also provide that the Attorney General report to the Legislature regarding the standards by January 1, 2001, and that the standards be effective January 1, 2002.

The bill would require the Department of Justice, effective January 1, 2001, to certify laboratories to test child safety devices, and would authorize the Department of Justice to charge the laboratories a fee not exceeding the costs of certification. The bill would also require the department to notify the manufacturer, importer, or dealer of the department's determination regarding whether the firearms safety device may be sold in this state. The bill would further require the department, not later than July 1, 2001, to compile, publish, and maintain a roster listing all safety devices that have been tested as described above, have been determined by the department to meet the standards for child safety devices, and that may be sold in this state.

This bill would require any packaging or other descriptive material that accompanies a firearm sold or transferred or manufactured in this state, to bear a label with a specified warning. The bill would also require the warning label be affixed to the firearm if the firearm is sold, transferred or delivered in this state without accompanying packaging.

This bill would authorize the Attorney General to recall any firearm or firearms safety device sold in this state after January 1, 2002, that does not conform to specified provisions of the act.

This bill would require each law enforcement agency investigating an incident to report specified information to the Attorney General in connection with unintentional gunshot wounds sustained by children after the effective date of the act.

This bill would provide that any violation of specified provisions of the act would be punishable by a fine of \$1,000. A second violation of those provisions would be punishable by



a fine of \$1,000 and would render a licensed manufacturer, licensed importer, or a licensed California dealer ineligible to manufacture or sell firearms for 30 days in this state. A third violation of those provisions would render a licensed manufacturer, licensed importer, or a licensed California dealer permanently ineligible to manufacture, import, or sell, respectively, firearms in this state.

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

This bill would declare that the act does not relieve any person from liability to any other person as may be imposed pursuant to common law, statutory law, or local ordinance. ~~This bill would also declare that the act does not require or prohibit local ordinances that place more stringent requirements upon firearms manufacturers, importers, or California dealers regarding firearm use-limitation devices or trigger locks.~~

This bill would declare that the act does not apply to the commerce of certain firearms, as specified.

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. Article 4.5 (commencing with Section
2 12087) is added to Chapter 4 of Title 2 of Part 4 of the
3 Penal Code, to read:

4

5 Article 4.5. Child Accident Prevention Devices

6

7 12087. This article shall be known and may be cited as
8 the “Aroner-Scott-Hayden Firearms Safety Act of 1999.”

9 12087.5. The Legislature makes the following
10 findings:



1 (a) In the years 1987 to 1996, nearly 2,200 children in
2 the United States under the age of 15 years died in
3 unintentional shootings. In 1996 alone, 138 children were
4 shot and killed unintentionally. Thus, more than 11
5 children every month, or one child every three days,
6 were shot or killed unintentionally in firearms-related
7 incidents.

8 (b) The United States leads the industrialized world in
9 the rates of children and youth lost to unintentional,
10 firearms-related death. A 1997 study from the federal
11 Centers for Disease Control and Prevention reveals that
12 for unintentional firearm-related deaths for children
13 under the age of 15, the rate in the United States was nine
14 times higher than in 25 other industrialized countries
15 combined.

16 (c) While the number of unintentional deaths from
17 firearms is an unacceptable toll on America's children,
18 nearly eight times that number are treated in U.S.
19 hospital emergency rooms each year for nonfatal
20 unintentional gunshot wounds.

21 (d) A study of unintentional firearm deaths among
22 children in California found that unintentional gunshot
23 wounds most often involve handguns.

24 (e) A study in the December 1995 issue of the Archives
25 of Pediatric and Adolescent Medicine found that children
26 as young as three years old are strong enough to fire most
27 commercially available handguns. The study revealed
28 that 25 percent of three to four year olds and 70 percent
29 of five to six year olds had sufficient finger strength to fire
30 59 (92 percent) of the 64 commonly available handguns
31 referenced in the study.

32 (f) The Government Accounting Office (GAO), in its
33 March 1991 study, "Accidental Shootings: Many Deaths
34 and Injuries Caused by Firearms Could be Prevented,"
35 estimates that 31 percent of accidental deaths caused by
36 firearms might be prevented by the addition of two safety
37 devices: a child-resistant safety device that automatically
38 engages and a device that indicates whether the gun is
39 loaded. According to the study results, of the 107
40 unintentional firearms-related fatalities the GAO



1 examined for the calendar years 1988 and 1989, eight
2 percent could have been prevented had the firearm been
3 equipped with a child-resistant safety device. This eight
4 percent represents instances in which children under the
5 age of six unintentionally shot and killed themselves or
6 other persons.

7 (g) Currently, firearms are the only products
8 manufactured in the United States that are not subject to
9 minimum safety standards.

10 (h) A 1997 public opinion poll conducted by the
11 National Opinion Research Center at the University of
12 Chicago in conjunction with the Johns Hopkins Center
13 for Gun Policy and Research found that 74 percent of
14 Americans support safety regulation of the firearms
15 industry.

16 (i) Some currently available trigger locks and other
17 similar devices are inadequate to prevent the accidental
18 discharge of the firearms to which they are attached, or
19 to prevent children from gaining access to the firearm.

20 12088. Effective January 1, 2001:

21 (a) The Department of Justice shall certify
22 laboratories to verify compliance with standards for
23 firearms safety devices set forth in Section 12088.2.

24 (b) The Department of Justice may charge any
25 laboratory that is seeking certification to test firearms
26 safety devices a fee not exceeding the costs of
27 certification.

28 (c) The certified laboratory shall, at the
29 manufacturer's or importer's or dealer's expense, test the
30 firearms safety device and submit a copy of the final test
31 report directly to the Department of Justice along with
32 the firearms safety device. The department shall notify
33 the manufacturer, dealer, or importer of its receipt of the
34 final test report and the department's determination as to
35 whether the firearms safety device tested may be sold in
36 this state.

37 (d) On and after July 1, 2001, the Department of
38 Justice shall compile, publish, and thereafter maintain a
39 roster listing all of the safety devices that have been tested
40 by a certified testing laboratory, have been determined



1 to meet the department's standards for firearms safety
2 devices and may be sold in this state.

3 (e) The roster shall list, for each firearms safety device,
4 the manufacturer, model number, and model name.

5 12088.1. Effective January 1, 2002:

6 (a) All firearms sold or transferred in this state by a
7 licensed firearms dealer, including private transfers
8 through a dealer, and all firearms manufactured in this
9 state, shall include or be accompanied by a firearms safety
10 device that is listed on the Department of Justice's roster
11 of approved firearms safety devices.

12 (b) All firearms sold or transferred in this state by a
13 licensed firearms dealer, including private transfers
14 through a dealer, and all firearms manufactured in this
15 state shall bear the warning label or labels prescribed in
16 Section 12088.3.

17 12088.2. (a) No later than January 1, 2000, the
18 Attorney General shall commence development of
19 regulations to implement a minimum safety standard for
20 firearms safety devices to significantly reduce the risk of
21 firearms-related injuries to children 18 years of age and
22 younger. The final standard shall do all of the following:

23 (1) Address the risk of injury from unintentional
24 gunshot wounds.

25 (2) Address the risk of injury from self-inflicted
26 gunshot wounds by unauthorized users.

27 (3) Include provisions to ensure that all firearms safety
28 devices are reusable and of adequate quality and
29 construction to prevent children and unauthorized users
30 from firing the firearm and to ensure that these devices
31 cannot be readily removed from the firearm except by an
32 authorized adult user utilizing the key, combination, or
33 other method of access intended by the manufacturer of
34 the device.

35 (4) Include additional provisions as appropriate.

36 (b) The Attorney General shall consult, for the
37 purposes of guidance in development of the standard, test
38 protocols such as those described in Title 16
39 (commencing with Part 1700) of the Code of Federal
40 Regulations, relating to poison prevention packaging



1 standards. The Attorney General shall also give
 2 appropriate consideration to the use of devices that are
 3 not detachable, but are permanently installed and
 4 incorporated into the design of a firearm. The Attorney
 5 General shall adopt and issue regulations implementing
 6 a final standard not later than January 1, 2001. The
 7 Attorney General shall report to the Legislature on these
 8 standards by January 1, 2001. The final standard shall be
 9 effective January 1, 2002.

10 12088.3. (a) The packaging of any firearm and any
 11 descriptive materials that accompany any firearm sold or
 12 transferred in this state, or delivered for sale in this state,
 13 by any licensed manufacturer, licensed importer, or
 14 licensed dealer, shall bear a label containing the following
 15 warning statement:

16
 17 **WARNING**

18
 19 Children are attracted to and can operate firearms that
 20 can cause severe injuries or death.

21
 22 Prevent child access by always keeping handguns
 23 locked away and unloaded.

24
 25 A yellow triangle containing an exclamation mark shall
 26 appear immediately before the word "Warning" on the
 27 label.

28 (b) If the firearm is sold or transferred without
 29 accompanying packaging, the warning label shall be
 30 affixed to the firearm itself by a method to be prescribed
 31 by regulation of the Attorney General.

32 (c) The warning statement required under
 33 subdivisions (a) and (b) shall be:

34 (1) Displayed in its entirety on the principal display
 35 panel of the firearm's package, and on any descriptive
 36 materials that accompany the firearm.

37 (2) Displayed in both English and Spanish in
 38 conspicuous and legible type in contrast by typography,
 39 layout, or color with other printed matter on that package
 40 or descriptive materials in a manner consistent with Part



1 1500.121 of Title 16, of the Code of Federal Regulations,
2 or successor regulations thereto.

3 12088.4. (a) If at any time the Attorney General
4 determines that a firearm or firearms safety device
5 subject to the provisions of this article and sold after
6 January 1, 2002, does not conform with the standards and
7 warnings required by Sections 12088.1, 12088.2, and
8 12088.3, the Attorney General may order the recall and
9 replacement of the firearm or firearms safety device by
10 the licensed manufacturer, or licensed firearms dealer, or
11 order that the licensed manufacturer or licensed firearms
12 dealer bring the firearm or firearms safety device into
13 conformity with those requirements. If only the firearms
14 safety device is recalled, the licensed manufacturer of the
15 firearms safety device or licensed firearms dealer shall
16 immediately provide a conforming replacement.

17 12088.5. (a) Each law enforcement agency
18 investigating an incident shall report to the Attorney
19 General any information obtained by the manufacturer,
20 importer, or dealer which reasonably supports the
21 conclusion that:

22 (1) Any incident in which a child 18 years of age or
23 younger suffered an unintentional or self-inflicted
24 gunshot wound inflicted by a firearm that was sold or
25 transferred in this state, or delivered for sale in this state,
26 by the licensed manufacturer, licensed importer, or
27 licensed dealer, after the effective date of this article.

28 (2) Whether as a result of that incident the child died,
29 suffered serious injury, or was treated for an injury by a
30 medical professional.

31 12088.6. Any violation of Section 12088.1 or Section
32 12088.3 is punishable by a fine of one thousand dollars
33 (\$1,000). On the second violation of any of those sections,
34 the licensed firearm manufacturer shall be ineligible to
35 manufacture, the licensed firearm importer shall be
36 ineligible to import, or the licensed firearm dealer shall
37 be ineligible to sell, firearms in this state for 30 days, and
38 shall be punished by a fine of one thousand dollars
39 (\$1,000). On the third violation of any of those sections,
40 a firearm manufacturer shall be permanently ineligible to



1 manufacture firearms in this state. On the third violation
2 of any of those sections, a licensed firearm importer shall
3 be permanently ineligible to import firearms into this
4 state for sale in this state. On the third violation of any of
5 those sections, a licensed firearm dealer shall be
6 permanently ineligible to sell firearms in this state.

7 12088.7. ~~(a)~~ Compliance with the requirements set
8 forth in this article shall not relieve any person from
9 liability to any other person as may be imposed pursuant
10 to common law, statutory law, or local ordinance.

11 ~~(b) Nothing in this article shall require or prohibit any~~
12 ~~local ordinance which places a more stringent~~
13 ~~requirement upon firearms manufacturers, importers, or~~
14 ~~dealers regarding firearm use limitation devices or~~
15 ~~trigger locks.~~

16 12088.8. (a) This article does not apply to the
17 commerce of any firearm defined as an “antique firearm”
18 in paragraph (16) of subsection (a) of Section 921 of Title
19 18 of the United States Code.

20 (b) This article shall not apply to the commerce of any
21 firearm intended to be used by a full-time, paid peace
22 officer as defined in Chapter 4.5 (commencing with
23 Section 830) of Title 3 of Part 2.

24 SEC. 2. No reimbursement is required by this act
25 pursuant to Section 6 of Article XIII B of the California
26 Constitution because the only costs that may be incurred
27 by a local agency or school district will be incurred
28 because this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition
32 of a crime within the meaning of Section 6 of Article
33 XIII B of the California Constitution.

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