

AMENDED IN ASSEMBLY APRIL 20, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

AMENDED IN ASSEMBLY MARCH 18, 1999

AMENDED IN ASSEMBLY MARCH 10, 1999

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 Corbett, 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, *except as provided*, 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~~ *gun safe* or firearms safety device sold in this state after January 1, 2002, that does not conform to specified provisions of the act, *as specified*.

This bill would require each law enforcement agency investigating an incident to report specified information to the ~~Attorney General~~ *State Department of Health Services* 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 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 *Firearms Safety Devices*

7

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

10 12087.5. The Legislature makes the following
11 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~~ or dealer of its
34 receipt of the final test report and the department's
35 determination as to whether the firearms safety device
36 tested may be sold in 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~~ *be*
16 *accompanied with warning language or labels as*
17 *described in Section 12088.3.*

18 (c) *The sale or transfer of a firearm shall be exempt*
19 *from subdivision (a) if both of the following apply:*

20 (1) *The purchaser or transferee owns a gun safe that*
21 *meets the standards set forth in Section 12088.2. Gun safes*
22 *shall not be required to be tested, and therefore may*
23 *meet the standards without appearing on the*
24 *Department of Justice roster.*

25 (2) *The purchaser or transferee presents an original*
26 *receipt for purchase of the gun safe, or other proof of*
27 *purchase and ownership of the gun safe as authorized by*
28 *the Attorney General, to the firearms dealer. The dealer*
29 *shall maintain a copy of this receipt or proof of purchase*
30 *with the dealers' record of sales of firearms.*

31 (d) *The sale or transfer of a firearm shall be exempt*
32 *from subdivision (a) if all of the following apply:*

33 (1) *The purchaser or transferee purchases an*
34 *approved safety device from another store no more than*
35 *30 days prior to the day the firearm is picked up.*

36 (2) *The purchaser or transferee presents the approved*
37 *safety device to the firearms dealer when picking up the*
38 *firearm.*

39 (3) *The purchaser or transferee presents an original*
40 *receipt to the firearms dealer which shows the date of*



1 *purchase, the name, and the model number of the safety*
2 *device.*

3 (4) *The firearms dealer verifies that the requirements*
4 *in (1) to (3), inclusive, have been satisfied.*

5 (5) *The firearms dealer maintains a copy of the receipt*
6 *along with the dealers' record of sales of firearms.*

7 12088.2. (a) No later than January 1, 2000, the
8 Attorney General shall commence development of
9 regulations to implement a minimum safety standard for
10 firearms safety devices *and gun safes* to significantly
11 reduce the risk of firearms-related injuries to children 18
12 years of age and younger. The final standard shall do all
13 of the following:

14 (1) Address the risk of injury from unintentional
15 gunshot wounds.

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

18 (3) Include provisions to ensure that all firearms safety
19 devices *and gun safes* are reusable and of adequate
20 quality and construction to prevent children and
21 unauthorized users from firing the firearm and to ensure
22 that these devices cannot be readily removed from the
23 firearm *or that the firearm cannot be readily removed*
24 *from the gun safe* except by an authorized—~~adult~~ user
25 utilizing the key, combination, or other method of access
26 intended by the manufacturer of the device.

27 (4) Include additional provisions as appropriate.

28 (b) The Attorney General—~~shall~~ *may* consult, for the
29 purposes of guidance in development of the—~~standard~~
30 *standards*, test protocols such as those described in Title
31 16 (commencing with Part 1700) of the Code of Federal
32 Regulations, relating to poison prevention packaging
33 standards. *These protocols may be consulted to provide*
34 *suggestions for potential methods to utilize in developing*
35 *standards and shall serve as guidance only.* The Attorney
36 General shall also give appropriate consideration to the
37 use of devices that are not detachable, but are
38 permanently installed and incorporated into the design
39 of a firearm. The Attorney General shall adopt and issue
40 regulations implementing a final standard not later than



1 January 1, 2001. The Attorney General shall report to the
2 Legislature on these standards by January 1, 2001. The
3 final standard shall be effective January 1, 2002.

4 12088.3. (a) The packaging of any firearm and any
5 descriptive materials that accompany any firearm sold or
6 transferred in this state, or delivered for sale in this state,
7 by any licensed manufacturer, ~~licensed importer,~~ or
8 licensed dealer, shall bear a label containing the following
9 warning statement:

10
11 WARNING

12
13 Children are attracted to and can operate firearms that
14 can cause severe injuries or death.

15
16 Prevent child access by always keeping ~~handguns~~ *guns*
17 locked away and unloaded *when not in use. If you keep*
18 *a loaded firearm where a child obtains and improperly*
19 *uses it, you may be fined or sent to prison.*
20

21 A yellow triangle containing an exclamation mark shall
22 appear immediately before the word “Warning” on the
23 label.

24 (b) If the firearm is sold or transferred without
25 accompanying packaging, the warning label *or notice*
26 shall be affixed to the firearm itself by a method to be
27 prescribed by regulation of the Attorney General.

28 (c) The warning statement required under
29 subdivisions (a) and (b) shall be:

30 (1) Displayed in its entirety on the principal display
31 panel of the firearm’s package, and on any descriptive
32 materials that accompany the firearm.

33 (2) Displayed in both English and Spanish in
34 conspicuous and legible type in contrast by typography,
35 layout, or color with other printed matter on that package
36 or descriptive materials in a manner consistent with Part
37 1500.121 of Title 16, of the Code of Federal Regulations,
38 or successor regulations thereto.

39 12088.4. (a) If at any time the Attorney General
40 determines that a ~~firearm or gun safe or~~ *firearms safety*



1 device subject to the provisions of this article and sold
2 after January 1, 2002, does not conform with the standards
3 and warnings required by ~~Sections 12088.1, subdivision~~
4 ~~(a) of Section 12088.1 and Section 12088.2, and 12088.3,~~
5 the Attorney General may order the recall and
6 replacement of the ~~firearm or gun safe or firearms safety~~
7 ~~device by the licensed manufacturer, or licensed firearms~~
8 ~~dealer, or order that the licensed manufacturer or~~
9 ~~licensed firearms dealer bring the firearm or firearms~~
10 ~~safety device into, or order that the gun safe or firearm~~
11 ~~safety device be brought into conformity with those~~
12 ~~requirements. If only the firearms safety device is~~
13 ~~recalled, the licensed manufacturer of the firearms safety~~
14 ~~device or licensed firearms dealer shall immediately~~
15 ~~provide a conforming replacement. If the firearms safety~~
16 ~~device cannot be separated from the firearm without~~
17 ~~damaging the firearm, the Attorney General may order~~
18 ~~the recall and replacement of the firearm. If the firearms~~
19 ~~safety device can be separated and reattached to the~~
20 ~~firearm without damaging the firearm, the licensed~~
21 ~~manufacturer or licensed firearms dealer shall~~
22 ~~immediately provide a conforming replacement as~~
23 ~~instructed by the Attorney General.~~

24 12088.5. (a) Each *lead* law enforcement agency
25 investigating an incident shall report to the ~~Attorney~~
26 ~~General~~ *State Department of Health Services* any
27 information obtained by the manufacturer, importer, or
28 dealer which reasonably supports the conclusion that:

29 (1) ~~Any incident in which a~~ A child 18 years of age or
30 younger suffered an unintentional or self-inflicted
31 gunshot wound inflicted by a firearm that was sold or
32 transferred in this state, or ~~delivered for sale~~
33 ~~manufactured~~ in this state, ~~by the licensed manufacturer,~~
34 ~~licensed importer, or licensed dealer, after the effective~~
35 ~~date of this article.~~

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

39 12088.6. Any violation of Section 12088.1 or Section
40 12088.3 is punishable by a fine of one thousand dollars



1 (\$1,000). On the second violation of any of those sections,
2 the licensed firearm manufacturer shall be ineligible to
3 manufacture, ~~the licensed firearm importer shall be~~
4 ~~ineligible to import~~, or the licensed firearm dealer shall
5 be ineligible to sell, firearms in this state for 30 days, and
6 shall be punished by a fine of one thousand dollars
7 (\$1,000). On the third violation of any of those sections,
8 a firearm manufacturer shall be permanently ineligible to
9 manufacture firearms in this state. ~~On the third violation~~
10 ~~of any of those sections, a licensed firearm importer shall~~
11 ~~be permanently ineligible to import firearms into this~~
12 ~~state for sale in this state.~~ On the third violation of any of
13 those sections, a licensed firearm dealer shall be
14 permanently ineligible to sell firearms in this state.

15 12088.7. Compliance with the requirements set forth
16 in this article shall not relieve any person from liability to
17 any other person as may be imposed pursuant to common
18 law, statutory law, or local ordinance.

19 12088.8. (a) This article does not apply to the
20 commerce of any firearm defined as an “antique firearm”
21 in paragraph (16) of subsection (a) of Section 921 of Title
22 18 of the United States Code.

23 (b) This article shall not apply to the commerce of any
24 firearm intended to be used by a ~~full-time, paid~~ *salaried,*
25 *full-time* peace officer as defined in Chapter 4.5
26 (commencing with Section 830) of Title 3 of Part 2 *for*
27 *purposes of law enforcement. Nothing in this article shall*
28 *preclude local governments, local agencies, or state law*
29 *enforcement agencies from requiring their peace officers*
30 *to store their firearms in gun safes or attach firearms*
31 *safety devices to those firearms.*

32 SEC. 2. No reimbursement is required by this act
33 pursuant to Section 6 of Article XIII B of the California
34 Constitution because the only costs that may be incurred
35 by a local agency or school district will be incurred
36 because this act creates a new crime or infraction,
37 eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

O

