

Introduced by Senator Polanco

December 7, 1998

An act to add Chapter 1.3 (commencing with Section 12125) to Title 2 of Part 4 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 15, as introduced, Polanco. Firearms.

Existing law makes it a misdemeanor or felony to manufacture or cause to be manufactured, import into the state, keep for sale, offer or expose for sale, give, lend, or possess specified weapons, but not including an unsafe handgun.

This bill, commencing January 1, 2001, would make it a misdemeanor to manufacture or cause to be manufactured, import into the state for sale, keep for sale, offer or expose for sale, give, or lend any unsafe handgun, except as specified. By creating new crimes, this bill would impose a state-mandated local program.

This bill additionally would require every person licensed to manufacture firearms pursuant to federal law who manufactures firearms in this state and every person who imports into the state for sale, keeps for sale, or offers or exposes for sale any firearm to certify under penalty of perjury that every model, kind, class, style, or type of pistol, revolver, or other firearm capable of being concealed upon the person that he or she manufactures or imports, keeps, or exposes for sale is not a prohibited unsafe handgun. By expanding the

crime of perjury, this bill would impose a state-mandated local program.

The bill also would require any pistol, revolver, or other firearm capable of being concealed upon the person manufactured in this state, imported into the state for sale, kept for sale, or offered or exposed for sale, to be tested by an independent laboratory certified by the Department of Justice to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person meets or exceeds specified standards defining unsafe handguns. The bill would require the Department of Justice to certify laboratories for this purpose on or before July 1, 2000.

The bill also would require the Department of Justice, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that are not unsafe handguns by the manufacturer, model number, and model name. The bill would authorize the department to charge every person in this state who is licensed as a manufacturer of firearms pursuant to federal law, and any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in this state, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster.

The bill would state the intent of the Legislature that the Department of Justice pursue an internal loan from special fund revenues available to the department to cover startup costs for the unsafe handgun program established pursuant to the bill. The bill would require the department to repay any loan with the proceeds of fees collected under that program within 6 months.

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. Chapter 1.3 (commencing with Section
2 12125) is added to Title 2 of Part 4 of the Penal Code, to
3 read:

4

5 CHAPTER 1.3. UNSAFE HANDGUNS

6

7 12125. (a) Commencing January 1, 2001, any person
8 in this state who manufactures or causes to be
9 manufactured, imports into the state for sale, keeps for
10 sale, offers or exposes for sale, gives, or lends any unsafe
11 handgun shall be punished by imprisonment in a county
12 jail not exceeding one year.

13 (b) This section shall not apply to any of the following:

14 (1) The manufacture in this state, or importation into
15 this state, of any prototype pistol, revolver, or other
16 firearm capable of being concealed upon the person
17 when the manufacture or importation is for the sole
18 purpose of allowing an independent laboratory certified
19 by the Department of Justice pursuant to Section 12130
20 to conduct an independent test to determine whether
21 that pistol, revolver, or other firearm capable of being
22 concealed upon the person is prohibited by this chapter,
23 and, if not, for the department to add the firearm to the
24 roster of pistols, revolvers, and other firearms capable of
25 being concealed upon the person that may be sold in this
26 state pursuant to Section 12131.

27 (2) The importation or lending of a pistol, revolver, or
28 other firearm capable of being concealed upon the
29 person by employees or authorized agents determining
30 whether the weapon is prohibited by this section.

31 (3) The sale to, purchase by, or possession of, any
32 pistol, revolver, or other firearm capable of being
33 concealed upon the person by the Department of Justice,
34 police departments, sheriffs' officials, marshals' offices,
35 the Department of Corrections, the California Highway

1 Patrol, district attorneys' offices, full-time paid peace
2 officers of other states and the federal government, the
3 federal military forces, the California National Guard, or
4 the State Military Reserve, excluding the unorganized
5 militia, when that weapon would be prevented by this
6 chapter from being sold in this state solely because it fails
7 to meet minimum frame and barrel size prerequisites
8 established by this chapter. Nothing in this chapter shall
9 prohibit the possession or use of any pistol, revolver, or
10 other firearm capable of being concealed upon the
11 person that would be prevented by this chapter from
12 being sold in this state solely because it fails to meet
13 minimum frame size prerequisites by sworn members of
14 these agencies when on duty and the use is within the
15 scope of their duties.

16 (4) Firearms listed as curios or relics, as defined in
17 Section 178.11 of Title 27 of the Code of Federal
18 Regulations.

19 (c) Violations of subdivision (a) are cumulative with
20 respect to each handgun and shall not be construed as
21 restricting the application of any other law. However, an
22 act or omission punishable in different ways by this
23 section and other provisions of law shall not be punished
24 under more than one provision, but the penalty to be
25 imposed shall be determined as set forth in Section 654.

26 12126. As used in this chapter, "unsafe handgun"
27 means any pistol, revolver, or other firearm capable of
28 being concealed upon the person, as defined in
29 subdivision (a) of Section 12001, for which any of the
30 following is true:

31 (a) For a revolver:

32 (1) It has an overall frame length of less than four and
33 one-half inches measured on a line parallel to the barrel.

34 (2) It has a barrel length less than three inches.

35 (3) It does not have a safety device that, either
36 automatically in the case of a double-action firing
37 mechanism, or by manual operation in the case of a
38 single-action firing mechanism, causes the hammer to
39 retract to a point where the firing pin does not rest upon
40 the primer of the cartridge.

(4) It does not meet the firing requirement for handguns pursuant to Section 12127.

(5) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

(b) For a pistol:

(1) It does not have a positive manually operated safety device.

(2) It has a combined length and height less than 10 inches with the height (right angle measurement to the barrel without magazine or extension) less than four inches and the length less than six inches.

(3) It does not meet the firing requirement for handguns pursuant to Section 12127.

(4) It does not meet the drop safety requirement for handguns pursuant to Section 12128.

12127. (a) As used in this chapter, the “firing requirement for handguns” means a test in which the manufacturer provides three handguns of the make and model for which certification is sought, these handguns not being in any way modified from those that would be sold if certification is granted, to an independent testing laboratory certified by the Attorney General pursuant to Section 12130. The laboratory shall fire 600 rounds from each gun, stopping after each series of 50 rounds has been fired for 5 to 10 minutes to allow the weapon to cool, stopping after each series of 100 rounds has been fired to tighten any loose screws and clean the gun in accordance with the manufacturer’s instructions, and stopping as needed to refill the empty magazine or cylinder to capacity before continuing. The ammunition used shall be of the type recommended by the handgun manufacturer in the user manual, or if none is recommended, any standard ammunition of the correct caliber in new condition. A handgun shall pass this test if each of the three test guns meets both of the following:

(1) Fires the first 20 rounds without a malfunction that is not due to faulty magazine or ammunition.

(2) Fires the full 600 rounds with no more than six malfunctions that are not due to faulty magazine or ammunition and without any crack or breakage of an

1 operating part of the handgun that increases the risk of
2 injury to the user.

3 (b) If a pistol or revolver fails the requirements of
4 either paragraph (1) or (2) of subdivision (a) due to
5 either a faulty magazine or faulty ammunition, the pistol
6 or revolver shall be retested from the beginning of the
7 “firing requirement for handguns” test. A new model of
8 the pistol or revolver that failed due to a faulty magazine
9 or ammunition may be submitted for the test to replace
10 the pistol or revolver that failed.

11 (c) As used in this section, “malfunction” means a
12 failure to properly feed, fire, or eject a round, or failure
13 of a pistol to accept or reject a manufacturer-approved
14 magazine, or failure of a pistol’s slide to remain open after
15 a manufacturer-approved magazine has been expended.

16 12128. As used in this chapter, the “drop safety
17 requirement for handguns” means that at the conclusion
18 of the firing requirements for handguns described in
19 Section 12127, the same certified independent testing
20 laboratory shall subject the same three handguns of the
21 make and model for which certification is sought, to the
22 following test:

23 A primed case (no powder or projectile) shall be
24 inserted into the chamber. For pistols, the slide shall be
25 released, allowing it to move forward under the impetus
26 of the recoil spring, and an empty magazine shall be
27 inserted. For both pistols and revolvers, the weapon shall
28 be placed in a drop fixture capable of dropping the pistol
29 from a drop height of 1m + 1cm (39.4 + 0.4 in.) onto the
30 largest side of a slab of solid concrete having minimum
31 dimensions 7.5 × 15 × 15 cm (3 × 6 × 6 in). The drop
32 distance shall be measured from the lowermost portion of
33 the weapon to the top surface of the slab. The weapon
34 shall be dropped from a fixture and not from the hand.
35 The weapon shall be dropped in the condition that it
36 would be in if it were dropped from a hand (cocked with
37 no manual safety applied). If the design of a pistol is such
38 that upon leaving the hand a “safety” is automatically
39 applied by the pistol, this feature shall not be defeated. An
40 approved drop fixture is a short piece of string with the



1 weapon attached at one end and the other end held in an
2 air vise until the drop is initiated.

3 The following six drops shall be performed:

4 (a) Normal firing position with barrel horizontal.

5 (b) Upside down with barrel horizontal.

6 (c) On grip with barrel vertical.

7 (d) On muzzle with barrel vertical.

8 (e) On either side with barrel horizontal.

9 (f) If there is an exposed hammer or striker, on the
10 rearmost point of that device, otherwise on the rearmost
11 point of the weapon.

12 The primer shall be examined for indentations after
13 each drop. If indentations are present, a fresh primed case
14 shall be used for the next drop.

15 The handgun shall pass this test if each of the three test
16 guns does not fire the primer.

17 12129. Every person who is licensed as a
18 manufacturer of firearms pursuant to Chapter 44
19 (commencing with Section 921) of Title 18 of the United
20 States Code who manufactures firearms in this state, and
21 every person who imports into the state for sale, keeps for
22 sale, or offers or exposes for sale any firearm, shall certify
23 under penalty of perjury and any other remedy provided
24 by law that every model, kind, class, style, or type of pistol,
25 revolver, or other firearm capable of being concealed
26 upon the person that he or she manufactures or imports,
27 keeps, or exposes for sale is not an unsafe handgun as
28 prohibited by this chapter.

29 12130. (a) Any pistol, revolver, or other firearm
30 capable of being concealed upon the person
31 manufactured in this state, imported into the state for
32 sale, kept for sale, or offered or exposed for sale, shall be
33 tested within a reasonable period of time by an
34 independent laboratory certified pursuant to subdivision
35 (b) to determine whether that pistol, revolver, or other
36 firearm capable of being concealed upon the person
37 meets or exceeds the standards defined in Section 12126.

38 (b) On or before July 1, 2000, the Department of
39 Justice shall certify laboratories to verify compliance with
40 the standards defined in Section 12126. The department

1 may charge any laboratory that is seeking certification to
2 test any pistol, revolver, or other firearm capable of being
3 concealed upon the person pursuant to this chapter a fee
4 not exceeding the costs of certification.

5 (c) The certified testing laboratory shall, at the
6 manufacturer's or importer's expense, test the firearm
7 and submit a copy of the final test report directly to the
8 Department of Justice along with a prototype of the
9 weapon. The department shall notify the manufacturer
10 or importer of its receipt of the final test report and the
11 department's determination as to whether the firearm
12 tested may be sold in this state.

13 12131. (a) On and after January 1, 2001, the
14 Department of Justice shall compile, publish, and
15 thereafter maintain a roster listing all of the pistols,
16 revolvers, and other firearms capable of being concealed
17 upon the person that have been tested by a certified
18 testing laboratory, have been determined not to be
19 unsafe handguns, and may be sold in this state pursuant
20 to this title. The roster shall list, for each firearm, the
21 manufacturer, model number, and model name.

22 (b) The department shall include on the roster any
23 pistol, revolver, or other firearm capable of being
24 concealed upon the person listed as a curio or relic, as
25 defined in Section 178.11 of Title 27 of the Code of Federal
26 Regulations.

27 (c) (1) The department may charge every person in
28 this state who is licensed as a manufacturer of firearms
29 pursuant to Chapter 44 (commencing with Section 921)
30 of Title 18 of the United States Code, and any person in
31 this state who manufactures or causes to be
32 manufactured, imports into the state for sale, keeps for
33 sale, or offers or exposes for sale any pistol, revolver, or
34 other firearm capable of being concealed upon the
35 person in this state, an annual fee not exceeding the costs
36 of preparing, publishing, and maintaining the roster
37 pursuant to subdivisions (a) and (b).

38 (2) Any pistol, revolver, or other firearm capable of
39 being concealed upon the person that is manufactured by
40 a manufacturer who manufactures or causes to be

1 manufactured, imports into the state for sale, keeps for
2 sale, or offers or exposes for sale any pistol, revolver, or
3 other firearm capable of being concealed upon the
4 person in this state, and who fails to pay any fee required
5 pursuant to paragraph (1), may be excluded from the
6 roster.

7 12132. This chapter shall not apply to any of the
8 following:

9 (a) The transfer of any firearm pursuant to Section
10 12082 or 12084 in order to comply with subdivision (d) of
11 Section 12072.

12 (b) The transfer of any firearm between immediate
13 family members that is exempt from the provisions of
14 subdivision (d) of Section 12072 pursuant to subdivision
15 (c) of Section 12078.

16 12133. The provisions of this chapter shall not apply to
17 a single-action revolver that has at least a five-cartridge
18 capacity with a barrel length of not less than three inches,
19 and meets any of the following specifications:

20 (a) Was originally manufactured prior to 1900 and is a
21 curio or relic, as defined in Section 178.11 of Title 27 of the
22 Code of Federal Regulations.

23 (b) Has an overall length measured parallel to the
24 barrel of at least seven and one-half inches when the
25 handle, frame or receiver, and barrel are assembled.

26 (c) Has an overall length measured parallel to the
27 barrel of at least seven and one-half inches when the
28 handle, frame or receiver, and barrel are assembled and
29 that is currently approved for importation into the United
30 States pursuant to the provisions of paragraph (3) of
31 subsection (d) of Section 925 of Title 18 of the United
32 States Code.

33 SEC. 2. It is the intent of the Legislature that the
34 Department of Justice pursue an internal loan from
35 special fund revenues available to the department to
36 cover startup costs for the program established pursuant
37 to Section 1 of this act. Any loan shall be repaid with the
38 proceeds of fees collected under that program within six
39 months.

1 SEC. 3. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution because the only costs that may be incurred
4 by a local agency or school district will be incurred
5 because this act creates a new crime or infraction,
6 eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section
8 17556 of the Government Code, or changes the definition
9 of a crime within the meaning of Section 6 of Article
10 XIII B of the California Constitution.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

