

AMENDED IN ASSEMBLY JUNE 2, 1999

AMENDED IN SENATE APRIL 13, 1999

AMENDED IN SENATE APRIL 5, 1999

AMENDED IN SENATE JANUARY 25, 1999

SENATE BILL

No. 15

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 amended, 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 January 1, 2001.

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 specify that nothing in its provisions requires or prohibits any local ordinance that places a more stringent requirement upon the manufacture, importation, transfer, sale, or possession of handguns.

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.

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

5 (3) Firearms listed as curios or relics, as defined in
6 Section 178.11 of Title 27 of the Code of Federal
7 Regulations.

8 (4) The sale to, purchase by, or possession of, any
9 pistol, revolver, or other firearm capable of being
10 concealed upon the person by the Department of Justice,
11 any police department, any sheriff official, any marshals'
12 office, the Department of Corrections, the California
13 Highway Patrol, any district attorneys' office, full-time
14 paid peace officers of other states and the federal
15 government, the federal military forces, the California
16 National Guard, the State Military Reserve, excluding the
17 unorganized militia, or sworn members of these agencies
18 when the sworn member has written authorization from
19 the employing agency.

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

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

32 (a) For a revolver:

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

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

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

(3) 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 operating part of the handgun that increases the risk of injury to the user.

(b) If a pistol or revolver fails the requirements of either paragraph (1) or (2) of subdivision (a) due to either a faulty magazine or faulty ammunition, the pistol or revolver shall be retested from the beginning of the

1 “firing requirement for handguns” test. A new model of
2 the pistol or revolver that failed due to a faulty magazine
3 or ammunition may be submitted for the test to replace
4 the pistol or revolver that failed.

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

10 12128. As used in this chapter, the “drop safety
11 requirement for handguns” means that at the conclusion
12 of the firing requirements for handguns described in
13 Section 12127, the same certified independent testing
14 laboratory shall subject the same three handguns of the
15 make and model for which certification is sought, to the
16 following test:

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

37 The following six drops shall be performed:

- 38 (a) Normal firing position with barrel horizontal.
- 39 (b) Upside down with barrel horizontal.
- 40 (c) On grip with barrel vertical.



1 (d) On muzzle with barrel vertical.

2 (e) On either side with barrel horizontal.

3 (f) If there is an exposed hammer or striker, on the
4 rearmost point of that device, otherwise on the rearmost
5 point of the weapon.

6 The primer shall be examined for indentations after
7 each drop. If indentations are present, a fresh primed case
8 shall be used for the next drop.

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

11 12129. Every person who is licensed as a
12 manufacturer of firearms pursuant to Chapter 44
13 (commencing with Section 921) of Title 18 of the United
14 States Code who manufactures firearms in this state, and
15 every person who imports into the state for sale, keeps for
16 sale, or offers or exposes for sale any firearm, shall certify
17 under penalty of perjury and any other remedy provided
18 by law that every model, kind, class, style, or type of pistol,
19 revolver, or other firearm capable of being concealed
20 upon the person that he or she manufactures or imports,
21 keeps, or exposes for sale is not an unsafe handgun as
22 prohibited by this chapter.

23 12130. (a) Any pistol, revolver, or other firearm
24 capable of being concealed upon the person
25 manufactured in this state, imported into the state for
26 sale, kept for sale, or offered or exposed for sale, shall be
27 tested within a reasonable period of time by an
28 independent laboratory certified pursuant to subdivision
29 (b) to determine whether that pistol, revolver, or other
30 firearm capable of being concealed upon the person
31 meets or exceeds the standards defined in Section 12126.

32 (b) On or before July 1, 2000, the Department of
33 Justice shall certify laboratories to verify compliance with
34 the standards defined in Section 12126. The department
35 may charge any laboratory that is seeking certification to
36 test any pistol, revolver, or other firearm capable of being
37 concealed upon the person pursuant to this chapter a fee
38 not exceeding the costs of certification.

39 (c) The certified testing laboratory shall, at the
40 manufacturer's or importer's expense, test the firearm

1 and submit a copy of the final test report directly to the
2 Department of Justice along with a prototype of the
3 weapon to be retained by the department. The
4 department shall notify the manufacturer or importer of
5 its receipt of the final test report and the department's
6 determination as to whether the firearm tested may be
7 sold in this state.

8 12131. (a) On and after January 1, 2001, the
9 Department of Justice shall compile, publish, and
10 thereafter maintain a roster listing all of the pistols,
11 revolvers, and other firearms capable of being concealed
12 upon the person that have been tested by a certified
13 testing laboratory, have been determined not to be
14 unsafe handguns, and may be sold in this state pursuant
15 to this title. The roster shall list, for each firearm, the
16 manufacturer, model number, and model name.

17 (b) The department shall include on the roster any
18 pistol, revolver, or other firearm capable of being
19 concealed upon the person listed as a curio or relic, as
20 defined in Section 178.11 of Title 27 of the Code of Federal
21 Regulations.

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

33 (2) Any pistol, revolver, or other firearm capable of
34 being concealed upon the person that is manufactured by
35 a manufacturer who manufactures or causes to be
36 manufactured, imports into the state for sale, keeps for
37 sale, or offers or exposes for sale any pistol, revolver, or
38 other firearm capable of being concealed upon the
39 person in this state, and who fails to pay any fee required



1 pursuant to paragraph (1), may be excluded from the
2 roster.

3 12131.5. (a) A firearm shall be deemed to satisfy the
4 requirements of subdivision (a) of Section 12131 if
5 another firearm made by the same manufacturer is
6 already listed and the unlisted firearm differs from the
7 listed firearm only in one or more of the following
8 features:

9 (1) Finish, including, but not limited to, bluing,
10 chrome-plating, oiling, or engraving.

11 (2) The material from which the grips are made.

12 (3) The shape or texture of the grips, so long as the
13 difference in grip shape or texture does not in any way
14 alter the dimensions, material, linkage, or functioning of
15 the magazine well, the barrel, the chamber, or any of the
16 components of the firing mechanism of the firearm.

17 (4) Any other purely cosmetic feature that does not in
18 any way alter the dimensions, material, linkage, or
19 functioning of the magazine well, the barrel, the
20 chamber, or any of the components of the firing
21 mechanism of the firearm.

22 (b) Any manufacturer seeking to have a firearm listed
23 under this section shall provide to the Department of
24 Justice all of the following:

25 (1) The model designation of the listed firearm.

26 (2) The model designation of each firearm that the
27 manufacturer seeks to have listed under this section.

28 (3) A statement, under oath, that each unlisted
29 firearm for which listing is sought differs from the listed
30 firearm only in one or more of the ways identified in
31 subdivision (a) and is in all other respects identical to the
32 listed firearm.

33 (c) The department may, in its discretion and at any
34 time, require a manufacturer to provide to the
35 department any model for which listing is sought under
36 this section, to determine whether the model complies
37 with the requirements of this section.

38 12132. This chapter shall not apply to any of the
39 following:

1 (a) The sale, loan, or transfer of any firearm pursuant
2 to Section 12082 or 12084 in order to comply with
3 subdivision (d) of Section 12072.

4 (b) The sale, loan, or transfer of any firearm that is
5 exempt from the provisions of subdivision (d) of Section
6 12072 pursuant to any applicable exemption contained in
7 Section 12078, if the sale, loan, or transfer complies with
8 the requirements of that applicable exemption to
9 subdivision (d) of Section 12072.

10 (c) The sale, loan, or transfer of any firearm as
11 described in paragraph (3) of subdivision (b) of Section
12 12125.

13 *(d) The delivery of a pistol, revolver, or other firearm*
14 *capable of being concealed upon the person to a person*
15 *licensed pursuant to Section 12071 for the purposes of the*
16 *service or repair of that firearm.*

17 *(e) The return of a pistol, revolver, or other firearm*
18 *capable of being concealed upon the person by a person*
19 *licensed pursuant to Section 12071 to its owner where that*
20 *firearm was initially delivered in the circumstance set*
21 *forth in subdivision (d).*

22 *(f) The return of a pistol, revolver, or other firearm*
23 *capable of being concealed upon the person by a person*
24 *licensed pursuant to Section 12071 to its owner where that*
25 *firearm was initially delivered to that licensee for the*
26 *purpose of a consignment sale or as collateral for a*
27 *pawnbroker loan.*

28 12133. The provisions of this chapter shall not apply to
29 a single-action revolver that has at least a five-cartridge
30 capacity with a barrel length of not less than three inches,
31 and meets any of the following specifications:

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

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

38 (c) Has an overall length measured parallel to the
39 barrel of at least seven and one-half inches when the
40 handle, frame or receiver, and barrel are assembled and



1 that is currently approved for importation into the United
2 States pursuant to the provisions of paragraph (3) of
3 subsection (d) of Section 925 of Title 18 of the United
4 States Code.

5 *12134. Nothing in this chapter shall require or*
6 *prohibit any local ordinance that places a more stringent*
7 *requirement upon the manufacture, importation,*
8 *transfer, sale, or possession of handguns.*

9 SEC. 2. It is the intent of the Legislature that the
10 Department of Justice pursue an internal loan from
11 special fund revenues available to the department to
12 cover startup costs for the program established pursuant
13 to Section 1 of this act. Any loan shall be repaid with the
14 proceeds of fees collected under that program within six
15 months.

16 SEC. 3. No reimbursement is required by this act
17 pursuant to Section 6 of Article XIII B of the California
18 Constitution because the only costs that may be incurred
19 by a local agency or school district will be incurred
20 because this act creates a new crime or infraction,
21 eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section
23 17556 of the Government Code, or changes the definition
24 of a crime within the meaning of Section 6 of Article
25 XIII B of the California Constitution.

