

AMENDED IN ASSEMBLY JUNE 16, 1999

AMENDED IN ASSEMBLY JUNE 2, 1999

AMENDED IN SENATE APRIL 13, 1999

AMENDED IN SENATE APRIL 5, 1999

AMENDED IN SENATE JANUARY 25, 1999

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**SENATE BILL**

**No. 15**

**Introduced by Senator Polanco**

December 7, 1998

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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,



1 and, if not, for the department to add the firearm to the  
2 roster of pistols, revolvers, and other firearms capable of  
3 being concealed upon the person that may be sold in this  
4 state pursuant to Section 12131.

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

9 (3) Firearms listed as curios or relics, as defined in  
10 Section 178.11 of Title 27 of the Code of Federal  
11 Regulations.

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

24 *(4) The sale to, purchase by, or possession of any pistol,*  
25 *revolver or other firearm capable of being concealed*  
26 *upon the person by the Department of Justice, any police*  
27 *department, any sheriff's official, any marshals' office, the*  
28 *Youth and Adult Correctional Agency, the California*  
29 *Highway Patrol, any district attorneys' office, the military*  
30 *or naval forces of this state or of the United States for use*  
31 *in the discharge of their official duties. Nor shall anything*  
32 *in this section prohibit the possession of any pistol,*  
33 *revolver, or other firearm capable of being concealed*  
34 *upon the person by sworn members of these agencies,*  
35 *whether the sworn member is on or off duty, or an*  
36 *individual who is retired from service with a law*  
37 *enforcement agency and who is not otherwise prohibited*  
38 *from possessing a concealable firearm upon his or her*  
39 *retirement.*

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

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

(a) For a revolver:

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

(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.

(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,

1 stopping after each series of 100 rounds has been fired to  
2 tighten any loose screws and clean the gun in accordance  
3 with the manufacturer's instructions, and stopping as  
4 needed to refill the empty magazine or cylinder to  
5 capacity before continuing. The ammunition used shall  
6 be of the type recommended by the handgun  
7 manufacturer in the user manual, or if none is  
8 recommended, any standard ammunition of the correct  
9 caliber in new condition. A handgun shall pass this test if  
10 each of the three test guns meets both of the following:

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

13 (2) Fires the full 600 rounds with no more than six  
14 malfunctions that are not due to faulty magazine or  
15 ammunition and without any crack or breakage of an  
16 operating part of the handgun that increases the risk of  
17 injury to the user.

18 (b) If a pistol or revolver fails the requirements of  
19 either paragraph (1) or (2) of subdivision (a) due to  
20 either a faulty magazine or faulty ammunition, the pistol  
21 or revolver shall be retested from the beginning of the  
22 "firing requirement for handguns" test. A new model of  
23 the pistol or revolver that failed due to a faulty magazine  
24 or ammunition may be submitted for the test to replace  
25 the pistol or revolver that failed.

26 (c) As used in this section, "malfunction" means a  
27 failure to properly feed, fire, or eject a round, or failure  
28 of a pistol to accept or reject a manufacturer-approved  
29 magazine, or failure of a pistol's slide to remain open after  
30 a manufacturer-approved magazine has been expended.

31 12128. As used in this chapter, the "drop safety  
32 requirement for handguns" means that at the conclusion  
33 of the firing requirements for handguns described in  
34 Section 12127, the same certified independent testing  
35 laboratory shall subject the same three handguns of the  
36 make and model for which certification is sought, to the  
37 following test:

38 A primed case (no powder or projectile) shall be  
39 inserted into the chamber. For pistols, the slide shall be  
40 released, allowing it to move forward under the impetus

1 of the recoil spring, and an empty magazine shall be  
2 inserted. For both pistols and revolvers, the weapon shall  
3 be placed in a drop fixture capable of dropping the pistol  
4 from a drop height of 1m + 1cm (39.4 + 0.4 in.) onto the  
5 largest side of a slab of solid concrete having minimum  
6 dimensions of 7.5 × 15 × 15 cm (3 × 6 × 6 in.). The drop  
7 distance shall be measured from the lowermost portion of  
8 the weapon to the top surface of the slab. The weapon  
9 shall be dropped from a fixture and not from the hand.  
10 The weapon shall be dropped in the condition that it  
11 would be in if it were dropped from a hand (cocked with  
12 no manual safety applied). If the design of a pistol is such  
13 that upon leaving the hand a “safety” is automatically  
14 applied by the pistol, this feature shall not be defeated. An  
15 approved drop fixture is a short piece of string with the  
16 weapon attached at one end and the other end held in an  
17 air vise until the drop is initiated.

18 The following six drops shall be performed:

- 19 (a) Normal firing position with barrel horizontal.
- 20 (b) Upside down with barrel horizontal.
- 21 (c) On grip with barrel vertical.
- 22 (d) On muzzle with barrel vertical.
- 23 (e) On either side with barrel horizontal.
- 24 (f) If there is an exposed hammer or striker, on the  
25 rearmost point of that device, otherwise on the rearmost  
26 point of the weapon.

27 The primer shall be examined for indentations after  
28 each drop. If indentations are present, a fresh primed case  
29 shall be used for the next drop.

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

32 12129. Every person who is licensed as a  
33 manufacturer of firearms pursuant to Chapter 44  
34 (commencing with Section 921) of Title 18 of the United  
35 States Code who manufactures firearms in this state, and  
36 every person who imports into the state for sale, keeps for  
37 sale, or offers or exposes for sale any firearm, shall certify  
38 under penalty of perjury and any other remedy provided  
39 by law that every model, kind, class, style, or type of pistol,  
40 revolver, or other firearm capable of being concealed

1 upon the person that he or she manufactures or imports,  
2 keeps, or exposes for sale is not an unsafe handgun as  
3 prohibited by this chapter.

4 12130. (a) Any pistol, revolver, or other firearm  
5 capable of being concealed upon the person  
6 manufactured in this state, imported into the state for  
7 sale, kept for sale, or offered or exposed for sale, shall be  
8 tested within a reasonable period of time by an  
9 independent laboratory certified pursuant to subdivision  
10 (b) to determine whether that pistol, revolver, or other  
11 firearm capable of being concealed upon the person  
12 meets or exceeds the standards defined in Section 12126.

13 (b) On or before July 1, 2000, the Department of  
14 Justice shall certify laboratories to verify compliance with  
15 the standards defined in Section 12126. The department  
16 may charge any laboratory that is seeking certification to  
17 test any pistol, revolver, or other firearm capable of being  
18 concealed upon the person pursuant to this chapter a fee  
19 not exceeding the costs of certification.

20 (c) The certified testing laboratory shall, at the  
21 manufacturer's or importer's expense, test the firearm  
22 and submit a copy of the final test report directly to the  
23 Department of Justice along with a prototype of the  
24 weapon to be retained by the department. The  
25 department shall notify the manufacturer or importer of  
26 its receipt of the final test report and the department's  
27 determination as to whether the firearm tested may be  
28 sold in this state.

29 12131. (a) On and after January 1, 2001, the  
30 Department of Justice shall compile, publish, and  
31 thereafter maintain a roster listing all of the pistols,  
32 revolvers, and other firearms capable of being concealed  
33 upon the person that have been tested by a certified  
34 testing laboratory, have been determined not to be  
35 unsafe handguns, and may be sold in this state pursuant  
36 to this title. The roster shall list, for each firearm, the  
37 manufacturer, model number, and model name.

38 (b) The department shall include on the roster any  
39 pistol, revolver, or other firearm capable of being  
40 concealed upon the person listed as a curio or relic, as



1 defined in Section 178.11 of Title 27 of the Code of Federal  
2 Regulations.

3 (c) (1) The department may charge every person in  
4 this state who is licensed as a manufacturer of firearms  
5 pursuant to Chapter 44 (commencing with Section 921)  
6 of Title 18 of the United States Code, and any person in  
7 this state who manufactures or causes to be  
8 manufactured, imports into the state for sale, keeps for  
9 sale, or offers or exposes for sale any pistol, revolver, or  
10 other firearm capable of being concealed upon the  
11 person in this state, an annual fee not exceeding the costs  
12 of preparing, publishing, and maintaining the roster  
13 pursuant to subdivisions (a) and (b).

14 (2) Any pistol, revolver, or other firearm capable of  
15 being concealed upon the person that is manufactured by  
16 a manufacturer who manufactures or causes to be  
17 manufactured, imports into the state for sale, keeps for  
18 sale, or offers or exposes for sale any pistol, revolver, or  
19 other firearm capable of being concealed upon the  
20 person in this state, and who fails to pay any fee required  
21 pursuant to paragraph (1), may be excluded from the  
22 roster.

23 12131.5. (a) A firearm shall be deemed to satisfy the  
24 requirements of subdivision (a) of Section 12131 if  
25 another firearm made by the same manufacturer is  
26 already listed and the unlisted firearm differs from the  
27 listed firearm only in one or more of the following  
28 features:

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

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

32 (3) The shape or texture of the grips, so long as the  
33 difference in grip shape or texture does not in any way  
34 alter the dimensions, material, linkage, or functioning of  
35 the magazine well, the barrel, the chamber, or any of the  
36 components of the firing mechanism of the firearm.

37 (4) Any other purely cosmetic feature that does not in  
38 any way alter the dimensions, material, linkage, or  
39 functioning of the magazine well, the barrel, the

1 chamber, or any of the components of the firing  
2 mechanism of the firearm.

3 (b) Any manufacturer seeking to have a firearm listed  
4 under this section shall provide to the Department of  
5 Justice all of the following:

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

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

9 (3) A statement, under oath, that each unlisted  
10 firearm for which listing is sought differs from the listed  
11 firearm only in one or more of the ways identified in  
12 subdivision (a) and is in all other respects identical to the  
13 listed firearm.

14 (c) The department may, in its discretion and at any  
15 time, require a manufacturer to provide to the  
16 department any model for which listing is sought under  
17 this section, to determine whether the model complies  
18 with the requirements of this section.

19 12132. This chapter shall not apply to any of the  
20 following:

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

24 (b) The sale, loan, or transfer of any firearm that is  
25 exempt from the provisions of subdivision (d) of Section  
26 12072 pursuant to any applicable exemption contained in  
27 Section 12078, if the sale, loan, or transfer complies with  
28 the requirements of that applicable exemption to  
29 subdivision (d) of Section 12072.

30 (c) The sale, loan, or transfer of any firearm as  
31 described in paragraph (3) of subdivision (b) of Section  
32 12125.

33 (d) The delivery of a pistol, revolver, or other firearm  
34 capable of being concealed upon the person to a person  
35 licensed pursuant to Section 12071 for the purposes of the  
36 service or repair of that firearm.

37 (e) The return of a pistol, revolver, or other firearm  
38 capable of being concealed upon the person by a person  
39 licensed pursuant to Section 12071 to its owner where that



1 firearm was initially delivered in the circumstance set  
2 forth in subdivision (d).

3 (f) The return of a pistol, revolver, or other firearm  
4 capable of being concealed upon the person by a person  
5 licensed pursuant to Section 12071 to its owner where that  
6 firearm was initially delivered to that licensee for the  
7 purpose of a consignment sale or as collateral for a  
8 pawnbroker loan.

9 12133. The provisions of this chapter shall not apply to  
10 a single-action revolver that has at least a five-cartridge  
11 capacity with a barrel length of not less than three inches,  
12 and meets any of the following specifications:

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

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

19 (c) Has an overall length measured parallel to the  
20 barrel of at least seven and one-half inches when the  
21 handle, frame or receiver, and barrel are assembled and  
22 that is currently approved for importation into the United  
23 States pursuant to the provisions of paragraph (3) of  
24 subsection (d) of Section 925 of Title 18 of the United  
25 States Code.

26 ~~12134. Nothing in this chapter shall require or~~  
27 ~~prohibit any local ordinance that places a more stringent~~  
28 ~~requirement upon the manufacture, importation,~~  
29 ~~transfer, sale, or possession of handguns.~~

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

37 SEC. 3. No reimbursement is required by this act  
38 pursuant to Section 6 of Article XIII B of the California  
39 Constitution because the only costs that may be incurred  
40 by a local agency or school district will be incurred

1 because this act creates a new crime or infraction,  
2 eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section  
4 17556 of the Government Code, or changes the definition  
5 of a crime within the meaning of Section 6 of Article  
6 XIII B of the California Constitution.

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