

Senate Bill No. 130

CHAPTER 245

An act to add Article 4.5 (commencing with Section 12087) to Chapter 1 of Title 2 of Part 4 of the Penal Code, relating to firearms.

[Approved by Governor August 27, 1999. Filed with Secretary of State August 30, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 130, Hayden. 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 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 gun safe 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 lead law enforcement agency investigating an incident to report specified information to the State Department of Health Services in connection with unintentional or self-inflicted 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, 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, or a licensed California dealer permanently ineligible to manufacture, or sell 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 bill would authorize the Department of Justice to require a firearm dealer to charge a firearm purchaser or transferee a fee not to exceed \$1 for each firearm transaction for the purpose of supporting various department program costs, 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.

The people of the State of California do enact as follows:

SECTION 1. Article 4.5 (commencing with Section 12087) is added to Chapter 1 of Title 2 of Part 4 of the Penal Code, to read:

Article 4.5. Firearms Safety Devices

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

12087.5. The Legislature makes the following findings:

(a) In the years 1987 to 1996, nearly 2,200 children in the United States under the age of 15 years died in unintentional shootings. In 1996 alone, 138 children were shot and killed unintentionally. Thus,



more than 11 children every month, or one child every three days, were shot or killed unintentionally in firearms-related incidents.

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

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

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

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

(f) The Government Accounting Office (GAO), in its March 1991 study, "Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could be Prevented," estimates that 31 percent of accidental deaths caused by firearms might be prevented by the addition of two safety devices: a child-resistant safety device that automatically engages and a device that indicates whether the gun is loaded. According to the study results, of the 107 unintentional firearms-related fatalities the GAO examined for the calendar years 1988 and 1989, eight percent could have been prevented had the firearm been equipped with a child-resistant safety device. This eight percent represents instances in which children under the age of six unintentionally shot and killed themselves or other persons.

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

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

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

12088. Effective January 1, 2001:



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

(b) The Department of Justice may charge any laboratory that is seeking certification to test firearms safety devices a fee not exceeding the costs of certification, including costs associated with the development and approval of regulations and standards pursuant to Section 12088.2.

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

(d) On and after July 1, 2001, the Department of Justice shall compile, publish, and thereafter maintain a roster listing all of the safety devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for firearms safety devices and may be sold in this state.

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

12088.1. Effective January 1, 2002:

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

(b) All firearms sold or transferred in this state by a licensed firearms dealer, including private transfers through a dealer, and all firearms manufactured in this state shall be accompanied with warning language or labels as described in Section 12088.3.

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

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

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

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



(1) The purchaser or transferee purchases an approved safety device no more than 30 days prior to the day the purchaser or transferee takes possession of the firearm.

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

(3) The purchaser or transferee presents an original receipt to the firearms dealer which shows the date of purchase, the name, and the model number of the safety device.

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

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

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

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

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

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

(4) Include additional provisions as appropriate.

(b) The Attorney General may consult, for the purposes of guidance in development of the standards, test protocols such as those described in Title 16 (commencing with Part 1700) of the Code of Federal Regulations, relating to poison prevention packaging standards. These protocols may be consulted to provide suggestions for potential methods to utilize in developing standards and shall serve as guidance only. The Attorney General shall also give appropriate consideration to the use of devices that are not detachable, but are permanently installed and incorporated into the design of a firearm. The Attorney General shall adopt and issue regulations implementing a final standard not later than January 1, 2001. The Attorney General shall report to the Legislature on these standards by January 1, 2001. The final standard shall be effective January 1, 2002.

12088.3. (a) The packaging of any firearm and any descriptive materials that accompany any firearm sold or transferred in this state, or delivered for sale in this state, by any licensed manufacturer, or



licensed dealer, shall bear a label containing the following warning statement:

WARNING

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

Prevent child access by always keeping guns locked away and unloaded when not in use. If you keep a loaded firearm where a child obtains and improperly uses it, you may be fined or sent to prison.

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

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

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

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

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

12088.4. (a) If at any time the Attorney General determines that a gun safe or firearms safety device subject to the provisions of this article and sold after January 1, 2002, does not conform with the standards required by subdivision (a) of Section 12088.1 or Section 12088.2, the Attorney General may order the recall and replacement of the gun safe or firearms safety device, or order that the gun safe or firearm safety device be brought into conformity with those requirements. If the firearms safety device cannot be separated from the firearm without damaging the firearm, the Attorney General may order the recall and replacement of the firearm. If the firearms safety device can be separated and reattached to the firearm without damaging the firearm, the licensed manufacturer or licensed firearms dealer shall immediately provide a conforming replacement as instructed by the Attorney General.

12088.5. Each lead law enforcement agency investigating an incident shall report to the State Department of Health Services any information obtained which reasonably supports the conclusion that:



(a) A child 18 years of age or younger suffered an unintentional or self-inflicted gunshot wound inflicted by a firearm that was sold or transferred in this state, or manufactured in this state.

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

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

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

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

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

12088.9. (a) The Department of Justice may require each dealer to charge each firearm purchaser or transferee a fee not to exceed one dollar (\$1) for each firearm transaction. The fee shall be for the purpose of supporting department program costs related to this act, including the establishment, maintenance, and upgrading of related data base systems and public rosters.

(b) There is hereby created within the General Fund the Firearm Safety Account. Revenue from the fee imposed by subdivision (a) shall be deposited into the Firearm Safety Account and shall be available for expenditure by the Department of Justice upon appropriation by the Legislature. Expenditures from the the Firearm Safety Account shall be limited to program expenditures as defined by subdivision (a).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime



or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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