

AMENDED IN SENATE AUGUST 19, 2010

AMENDED IN SENATE JUNE 22, 2010

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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2358

Introduced by Assembly Member De León

February 19, 2010

An act to amend Sections 12061 and ~~12318~~, *12318*, and *12323* of the Penal Code, relating to ammunition.

LEGISLATIVE COUNSEL'S DIGEST

AB 2358, as amended, De León. Ammunition.

Existing law provides that commencing February 1, 2011, a vendor shall not sell or otherwise transfer ownership of any handgun ammunition without, at the time of delivery, legibly recording specified information regarding the purchaser or transferee, and maintaining the record for a period of not less than 5 years, as specified. Existing law provides that violation of these provisions is a misdemeanor. Existing law also provides that the records shall be subject to inspection by any peace officer and certain others, as specified, for purposes of an investigation where access to those records is or may be relevant to that investigation, when seeking information about persons prohibited from owning a firearm or ammunition, or when engaged in ensuring compliance with laws pertaining to firearms or ammunition, as specified.

This bill would require the information described above in connection with the transfer of handgun ammunition be legibly or electronically recorded. The bill would provide that commencing February 1, 2011, except for investigatory and enforcement purposes described above, no

ammunition vendor shall provide the required information to any 3rd party without the written consent of the purchaser or transferee. The bill would also provide that records may be copied for investigatory or enforcement purposes by any person authorized to inspect those records, as specified, and that copies shall be transmitted to local law enforcement if required by local law. The bill would also provide that any required ammunition records that are no longer required to be maintained shall be destroyed in a manner that protects the privacy of the purchaser or transferee who is the subject of the record. The bill would provide that violation of these provisions is a misdemeanor.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The bill would require ammunition vendors, commencing February 1, 2011, to provide written notice to the local police chief, or if the vendor is in an unincorporated area, to the county sheriff, of the vendor's intent to conduct business in the jurisdiction, and to obtain any regulatory or business license required by the jurisdiction for ammunition sellers.

Existing law provides that commencing February 1, 2011, the delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face transaction with the deliverer or transferor being provided bona fide evidence of identity from the purchaser or other transferee.

This bill would also provide that handgun ammunition may be purchased over the Internet or through other means of remote ordering if a handgun ammunition vendor in California initially receives the ammunition and processes the transfer, as specified.

Existing law defines "handgun ammunition" for most purposes as ammunition principally for use in handguns, notwithstanding that the ammunition may also be used in some rifles.

This bill would instead define "handgun ammunition" for those purposes as any variety of ammunition of a caliber specified in a list added by this bill, notwithstanding that the ammunition may also be used in some rifles, and would provide that "handgun ammunition" does not include blanks or ammunition designed and intended to be used in an "antique firearm," as defined.

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. Section 12061 of the Penal Code is amended to
2 read:
3 12061. (a) A vendor shall comply with all of the following
4 conditions, requirements and prohibitions:
5 (1) A vendor shall not permit any employee who the vendor
6 knows or reasonably should know is a person described in Section
7 12021 or 12021.1 of this code or Section 8100 or 8103 of the
8 Welfare and Institutions Code to handle, sell, or deliver handgun
9 ammunition in the course and scope of his or her employment.
10 (2) A vendor shall not sell or otherwise transfer ownership of,
11 offer for sale or otherwise offer to transfer ownership of, or display
12 for sale or display for transfer of ownership of any handgun
13 ammunition in a manner that allows that ammunition to be
14 accessible to a purchaser or transferee without the assistance of
15 the vendor or employee thereof.
16 (3) Commencing February 1, 2011, a vendor shall not sell or
17 otherwise transfer ownership of any handgun ammunition without,
18 at the time of delivery, legibly or electronically recording the
19 following information:
20 (A) The date of the sale or other transaction.
21 (B) The purchaser's or transferee's driver's license or other
22 identification number and the state in which it was issued.
23 (C) The brand, type, and amount of ammunition sold or
24 otherwise transferred.
25 (D) The purchaser's or transferee's signature.
26 (E) The name of the salesperson who processed the sale or other
27 transaction.
28 (F) The right thumbprint of the purchaser or transferee on the
29 above form.
30 (G) The purchaser's or transferee's full residential address and
31 telephone number.
32 (H) The purchaser's or transferee's date of birth.
33 (4) Commencing February 1, 2011, the records required by this
34 section shall be maintained on the premises of the vendor for a
35 period of not less than five years from the date of the recorded

1 transfer. Commencing February 1, 2011, except for the purposes
2 set forth in paragraph (5), no vendor shall provide the information
3 specified in paragraph (3) to any third party without the written
4 consent of the purchaser or transferee. Any records required by
5 this section that are no longer required to be maintained shall be
6 destroyed in a manner that protects the privacy of the purchaser
7 or transferee who is the subject of the record.

8 (5) Commencing February 1, 2011, the records referred to in
9 paragraph (3) shall be subject to inspection at any time during
10 normal business hours by any peace officer employed by a sheriff,
11 city police department, or district attorney as provided in
12 subdivision (a) of Section 830.1, or employed by the department
13 as provided in subdivision (b) of Section 830.1, provided the officer
14 is conducting an investigation where access to those records is or
15 may be relevant to that investigation, is seeking information about
16 persons prohibited from owning a firearm or ammunition, or is
17 engaged in ensuring compliance with the Dangerous Weapons
18 Control Law (Chapter 1 (commencing with Section 12000) of Title
19 2 of Part 4), or any other laws pertaining to firearms or ammunition.
20 The records shall also be subject to inspection at any time during
21 normal business hours by any other employee of the department,
22 provided that employee is conducting an investigation where access
23 to those records is or may be relevant to that investigation, is
24 seeking information about persons prohibited from owning a
25 firearm or ammunition, or is engaged in ensuring compliance with
26 the Dangerous Weapons Control Law (Chapter 1 (commencing
27 with Section 12000) of Title 2 of Part 4), or any other laws
28 pertaining to firearms or ammunition. Records may be copied for
29 investigatory or enforcement purposes by any person authorized
30 to inspect those records pursuant to this subdivision.

31 (6) Commencing February 1, 2011, the vendor shall not
32 knowingly make a false entry in, fail to make a required entry in,
33 fail to obtain the required thumbprint, or otherwise fail to maintain
34 in the required manner records prepared in accordance with
35 paragraph (2). If the right thumbprint is not available, then the
36 vendor shall have the purchaser or transferee use his or her left
37 thumb, or any available finger, and shall so indicate on the form.
38 If the purchaser or transferee is physically unable to provide a
39 thumbprint or fingerprint, the vendor shall so indicate on the form.

1 (7) Commencing February 1, 2011, no vendor shall refuse to
2 permit a person authorized under paragraph (5) to examine any
3 record prepared in accordance with this section during any
4 inspection conducted pursuant to this section, or refuse to permit
5 the use of any record or information by those persons.

6 (8) Commencing February 1, 2011, a vendor shall provide
7 written notice to the local police chief, or if the vendor is in an
8 unincorporated area, to the county sheriff, of the vendor's intent
9 to conduct business in the jurisdiction, and shall obtain any
10 regulatory or business license required by the jurisdiction for
11 ammunition sellers. Copies of the ammunition sales records
12 required by this section shall be transmitted to the county sheriff
13 or chief of police if required by local law.

14 (b) Paragraph (3) of subdivision (a) shall not apply to or affect
15 sales or other transfers of ownership of handgun ammunition by
16 handgun ammunition vendors to any of the following, if properly
17 identified:

18 (1) A person licensed pursuant to Section 12071.

19 (2) A handgun ammunition vendor.

20 (3) A person who is on the centralized list maintained by the
21 department pursuant to Section 12083.

22 (4) A target facility which holds a business or regulatory license.

23 (5) Gunsmiths.

24 (6) Wholesalers.

25 (7) Manufacturers or importers of firearms licensed pursuant
26 to Chapter 44 (commencing with Section 921) of Title 18 of the
27 United States Code, and the regulations issued pursuant thereto.

28 (8) Sales or other transfers of ownership made to authorized
29 law enforcement representatives of cities, counties, cities and
30 counties, or state or federal governments for exclusive use by those
31 government agencies if, prior to the delivery, transfer, or sale of
32 handgun ammunition, written authorization from the head of the
33 agency authorizing the transaction is presented to the person from
34 whom the purchase, delivery, or transfer is being made. Proper
35 written authorization is defined as verifiable written certification
36 from the head of the agency by which the purchaser, transferee,
37 or person otherwise acquiring ownership is employed, identifying
38 the employee as an individual authorized to conduct the transaction,
39 and authorizing the transaction for the exclusive use of the agency
40 by which he or she is employed.

1 (c) (1) A violation of paragraph (3), (4), (6), or (7) of
2 subdivision (a) is a misdemeanor.

3 (2) The provisions of this subdivision are cumulative, and shall
4 not be construed as restricting the application of any other law.
5 However, an act or omission punishable in different ways by
6 different provisions of law shall not be punished under more than
7 one provision.

8 SEC. 2. Section 12318 of the Penal Code is amended to read:

9 12318. (a) Commencing February 1, 2011, the delivery or
10 transfer of ownership of handgun ammunition *in this state* may
11 only occur in a face-to-face transaction with the deliverer or
12 transferor being provided bona fide evidence of identity from the
13 purchaser or other transferee, provided, however, that handgun
14 ammunition may be purchased over the Internet or through other
15 means of remote ordering if a handgun ammunition vendor in
16 California initially receives the ammunition and processes the
17 transfer in compliance with this section and Section 12061. A
18 violation of this section is a misdemeanor.

19 (b) For purposes of this section:

20 (1) “Bona fide evidence of identity” means a document issued
21 by a federal, state, county, or municipal government, or subdivision
22 or agency thereof, including, but not limited to, a motor vehicle
23 operator’s license, state identification card, identification card
24 issued to a member of the Armed Forces, or other form of
25 identification that bears the name, date of birth, description, and
26 picture of the person.

27 (2) “Handgun ammunition” means handgun ammunition as
28 defined in subdivision (a) of Section ~~12323, but excluding~~
29 ~~ammunition designed and intended to be used in an “antique~~
30 ~~firearm” as defined in Section 921(a)(16) of Title 18 of the United~~
31 ~~States Code. Handgun ammunition does not include blanks. 12323.~~

32 (3) “Handgun ammunition vendor” has the same meaning as
33 set forth in Section 12060.

34 (c) Subdivision (a) shall not apply to or affect the deliveries,
35 transfers, or sales of, handgun ammunition to any of the following:

36 (1) Authorized law enforcement representatives of cities,
37 counties, cities and counties, or state and federal governments for
38 exclusive use by those government agencies if, prior to the delivery,
39 transfer, or sale of the handgun ammunition, written authorization
40 from the head of the agency employing the purchaser or transferee,

1 is obtained identifying the employee as an individual authorized
2 to conduct the transaction, and authorizing the transaction for the
3 exclusive use of the agency employing the individual.

4 (2) Sworn peace officers, as defined in Chapter 4.5 (commencing
5 with Section 830) of Title 3 of Part 2 who are authorized to carry
6 a firearm in the course and scope of their duties.

7 (3) Importers and manufacturers of handgun ammunition or
8 firearms licensed to engage in business pursuant to Chapter 44
9 (commencing with Section 921) of Title 18 of the United States
10 Code and the regulations issued pursuant thereto.

11 (4) Persons who are on the centralized list maintained by the
12 Department of Justice pursuant to Section 12083.

13 ~~(5) Persons whose licensed premises are outside this state who
14 are licensed as dealers or collectors of firearms pursuant to Chapter
15 44 (commencing with Section 921) of Title 18 of the United States
16 Code and the regulations issued pursuant thereto.~~

17 ~~(6)~~
18 (5) Persons licensed as *dealers or* collectors of firearms pursuant
19 to Chapter 44 (commencing with Section 921) of Title 18 of the
20 United States Code and the regulations issued pursuant thereto
21 ~~whose licensed premises are within this state who has a who have~~
22 ~~current certificate~~ *certificates* of eligibility issued to ~~him or her~~
23 ~~them~~ by the Department of Justice pursuant to Section 12071.

24 ~~(7)~~
25 (6) A handgun ammunition vendor.

26 ~~(8)~~
27 (7) A consultant-evaluator, as defined in subdivision (s) of
28 Section 12001.

29 *SEC. 3. Section 12323 of the Penal Code is amended to read:*
30 12323. As used in this chapter, the following definitions shall
31 apply:

32 (a) ~~“Handgun—ammunition”~~ *ammunition,” which does not*
33 *include blanks and ammunition designed and intended to be used*
34 *in an “antique firearm” as defined in Section 921(a)(16) of Title*
35 *18 of the United States Code, means ammunition principally for*
36 *use in pistols, revolvers, and other firearms capable of being*
37 *concealed upon the person, as defined in subdivision (a) of Section*
38 *12001, notwithstanding that the ammunition may also be used in*
39 *some rifles; any variety of ammunition in the following calibers,*

1 *notwithstanding that the ammunition may also be used in some*
2 *rifles:*

- 3 (1) .22.
- 4 (2) .25.
- 5 (3) .32.
- 6 (4) .38.
- 7 (5) .9mm.
- 8 (6) .10mm.
- 9 (7) .40.
- 10 (8) .41.
- 11 (9) .44.
- 12 (10) .45.
- 13 (11) 5.7x28mm.
- 14 (12) .223.
- 15 (13) .357.
- 16 (14) .454.
- 17 (15) 5.56x45mm.
- 18 (16) 7.62x39.
- 19 (17) 7.63mm.
- 20 (18) 7.65mm.
- 21 (19) .50.

22 (b) “Handgun ammunition designed primarily to penetrate metal
23 or armor” means any ammunition, except a shotgun shell or
24 ammunition primarily designed for use in rifles, that is designed
25 primarily to penetrate a body vest or body shield, and has either
26 of the following characteristics:

27 (1) Has projectile or projectile core constructed entirely,
28 excluding the presence of traces of other substances, from one or
29 a combination of tungsten alloys, steel, iron, brass, beryllium
30 copper, or depleted uranium, or any equivalent material of similar
31 density or hardness.

32 (2) Is primarily manufactured or designed, by virtue of its shape,
33 cross-sectional density, or any coating applied thereto, including,
34 but not limited to, ammunition commonly known as “KTW
35 ammunition,” to breach or penetrate a body vest or body shield
36 when fired from a pistol, revolver, or other firearm capable of
37 being concealed upon the person.

38 (c) “Body vest or shield” means any bullet-resistant material
39 intended to provide ballistic and trauma protection for the wearer
40 or holder.

1 (d) “Rifle” shall have the same meaning as defined in paragraph
2 (20) of subdivision (c) of Section 12020.

3 ~~SEC. 3.~~

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