

AMENDED IN SENATE APRIL 16, 2012

SENATE BILL

No. 1567

Introduced by Senator La Malfa

February 24, 2012

An act to *amend Sections 26150, 26155, 26185, 26950, 27535, and 28220 of, and to add Sections 26975 and 27652 to, the Penal Code, relating to firearms.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1567, as amended, La Malfa. Firearms: waiting period: exemptions.

Existing law generally prohibits the carrying of a concealed firearm without a license. Existing law permits a sheriff or head of a municipal police department to issue a license to a person who submits an application to carry a concealed firearm upon proof of certain factors, including that the applicant is of good moral character, that good cause exists for the issuance of the license, and certain residency requirements are met.

This bill would also require proof that the individual is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. By requiring sheriffs and municipal police departments to perform additional duties, the bill would impose a state-mandated local program.

Existing law requires the fingerprints of an applicant for a concealed firearm license to be sent to the Department of Justice and requires the department, upon receipt of the fingerprints and a prescribed fee, to furnish the licensing authority with a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited by state

or federal law from possessing, receiving, owning, or purchasing a firearm.

This bill would require the department, upon receipt of the fingerprints and fee and upon an application for renewal of a license, to conduct an investigation that includes a report from the National Instant Criminal Background Check System to ensure that the applicant is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

Existing law prohibits a dealer from delivering a firearm to a person within ~~10 days~~ 10 days of an application to purchase, within 10 days of the submission to the Department of Justice of any correction to the application, or within ~~10 days~~ 10 days of the submission to the department of a firearm purchaser fee, whichever is later. Existing law provides that this 10-day waiting period does not apply to the sale, delivery, or transfer of firearms to a full-time paid peace officer who is authorized to carry firearms while in the performance of duties, or to a dealer who delivers a firearm, other than a handgun, at an auction or similar event, among other exceptions.

~~Existing law generally prohibits the carrying of concealed firearms without a license. Existing law permits a sheriff or head of a municipal police department to issue a license to a person who submits an application to carry a concealed firearm upon proof that the applicant is of a good moral character, that good cause exists for the issuance of the license, and certain residency requirements are met.~~

This bill would provide that the 10-day waiting period does not apply to the sale, delivery, or transfer of firearms to any person who is authorized to carry a weapon in a concealed manner pursuant to the above provisions, *or to the sale, delivery, or transfer of firearms for personal use to a peace officer or retired peace officer, as specified, who is authorized to carry a concealed weapon.*

Existing law requires the Department of Justice, upon submission of firearm purchaser information by a firearms dealer, to examine records to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

This bill would require the department to respond to the dealer within 24 hours with a hold status if the available information indicates that further investigation is required to determine whether the individual is approved or prohibited. The bill would require the department to respond to a dealer who has received a hold status with either an approved or prohibited status immediately upon completion of the

department's investigation, and would prohibit a dealer from releasing a firearm until the dealer has received an approved status for the purchaser from the department.

This bill would make conforming changes.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 26150 of the Penal Code is amended to
2 read:

3 26150. (a) When a person applies for a license to carry a pistol,
4 revolver, or other firearm capable of being concealed upon the
5 person, the sheriff of a county may issue a license to that person
6 upon proof of all of the following:

7 (1) The applicant is of good moral character.

8 (2) Good cause exists for issuance of the license.

9 (3) The applicant is a resident of the county or a city within the
10 county, or the applicant's principal place of employment or
11 business is in the county or a city within the county and the
12 applicant spends a substantial period of time in that place of
13 employment or business.

14 (4) The applicant has completed a course of training as described
15 in Section 26165.

16 (5) *The applicant is not prohibited by state or federal law from*
17 *possessing, receiving, owning, or purchasing a firearm.*

18 (b) The sheriff may issue a license under subdivision (a) in
19 either of the following formats:

20 (1) A license to carry concealed a pistol, revolver, or other
21 firearm capable of being concealed upon the person.

22 (2) Where the population of the county is less than 200,000
23 persons according to the most recent federal decennial census, a

1 license to carry loaded and exposed in only that county a pistol,
2 revolver, or other firearm capable of being concealed upon the
3 person.

4 *SEC. 2. Section 26155 of the Penal Code is amended to read:*

5 26155. (a) When a person applies for a license to carry a pistol,
6 revolver, or other firearm capable of being concealed upon the
7 person, the chief or other head of a municipal police department
8 of any city or city and county may issue a license to that person
9 upon proof of all of the following:

- 10 (1) The applicant is of good moral character.
11 (2) Good cause exists for issuance of the license.
12 (3) The applicant is a resident of that city.
13 (4) The applicant has completed a course of training as described
14 in Section 26165.

15 (5) *The applicant is not prohibited by state or federal law from*
16 *possessing, receiving, owning, or purchasing a firearm.*

17 (b) The chief or other head of a municipal police department
18 may issue a license under subdivision (a) in either of the following
19 formats:

20 (1) A license to carry concealed a pistol, revolver, or other
21 firearm capable of being concealed upon the person.

22 (2) Where the population of the county in which the city is
23 located is less than 200,000 persons according to the most recent
24 federal decennial census, a license to carry loaded and exposed in
25 only that county a pistol, revolver, or other firearm capable of
26 being concealed upon the person.

27 (c) Nothing in this chapter shall preclude the chief or other head
28 of a municipal police department of any city from entering an
29 agreement with the sheriff of the county in which the city is located
30 for the sheriff to process all applications for licenses, renewals of
31 licenses, and amendments to licenses, pursuant to this chapter.

32 *SEC. 3. Section 26185 of the Penal Code is amended to read:*

33 26185. (a) (1) The fingerprints of each applicant shall be taken
34 and two copies on forms prescribed by the Department of Justice
35 shall be forwarded to the department.

36 (2) Upon receipt of the fingerprints and the fee as prescribed in
37 Section 26190, the department shall promptly *conduct an*
38 *investigation and* furnish the forwarding licensing authority a
39 report of all data and information pertaining to any applicant of
40 which there is a record in its office, including information as to

1 whether the person is prohibited by state or federal law from
2 possessing, receiving, owning, or purchasing a firearm. *The*
3 *investigation shall include a report from the National Instant*
4 *Criminal Background Check System.*

5 (3) No license shall be issued by any licensing authority until
6 after receipt of the report from the department.

7 (b) Notwithstanding subdivision (a), if the license applicant has
8 previously applied to the same licensing authority for a license to
9 carry firearms pursuant to this article and the applicant's
10 fingerprints and fee have been previously forwarded to the
11 Department of Justice, as provided by this section, the licensing
12 authority shall note the previous identification numbers and other
13 data that would provide positive identification in the files of the
14 Department of Justice on the copy of any subsequent license
15 submitted to the department in conformance with Section 26225
16 and no additional application form or fingerprints shall be required.

17 (c) If the license applicant has a license issued pursuant to this
18 article and the applicant's fingerprints have been previously
19 forwarded to the Department of Justice, as provided in this section,
20 the licensing authority shall note the previous identification
21 numbers and other data that would provide positive identification
22 in the files of the Department of Justice on the copy of any
23 subsequent license submitted to the department in conformance
24 with Section 26225 and no additional fingerprints shall be required.

25 (d) *The department shall ensure that an applicant seeking to*
26 *renew or extend the validity of a license, as provided in Section*
27 *26220, is not prohibited by state or federal law from possessing,*
28 *receiving, owning, or purchasing a firearm by conducting an*
29 *investigation including the National Instant Criminal Background*
30 *Check System.*

31 *SEC. 4. Section 26950 of the Penal Code is amended to read:*

32 26950. (a) The waiting period described in Section 26815 does
33 not apply to the sale, delivery, or transfer of firearms made to any
34 person who satisfies both of the following requirements:

35 (1) The person is properly identified as a full-time paid peace
36 officer, as defined in Chapter 4.5 (commencing with Section 830)
37 of Title 3 of Part 2.

38 (2) The officer's employer has authorized the officer to carry
39 firearms while in the performance of duties.

(b) (1) Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of duties, and authorizing the purchase or transfer.

(2) The certification shall be delivered to the dealer at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification.

(3) The dealer shall keep the certification with the record of sale.

(4) On the date that the sale, delivery, or transfer is made, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in Section 28160 or 28165.

(c) The provisions of this section do not apply to the sale, delivery, or transfer of firearms to a peace officer for personal use as described in Section 26975.

~~SECTION 1.~~

SEC. 5. Section 26975 is added to the Penal Code, to read:

26975. The waiting period described in *subdivision (a) of* Section 26815 does not apply to ~~the~~ *the following*:

(a) *The sale, delivery, or transfer of firearms made to any person who is authorized to carry a weapon in a concealed manner pursuant to Chapter 4 (commencing with Section 26150) of Division 5.*

(b) *The sale, delivery, or transfer of a firearm for personal use made to a peace officer or retired peace officer identified in subdivisions (a) to (d), inclusive, of Section 25450, who is authorized to carry a weapon in a concealed manner pursuant to Article 2 (commencing with Section 25450) of Chapter 2 of Division 5.*

SEC. 6. *Section 27535 of the Penal Code is amended to read:*

27535. (a) No person shall make an application to purchase more than one handgun within any 30-day period.

(b) Subdivision (a) shall not apply to any of the following:

(1) Any law enforcement agency.

(2) Any agency duly authorized to perform law enforcement duties.

(3) Any state or local correctional facility.

1 (4) Any private security company licensed to do business in
2 California.

3 (5) Any person who is properly identified as a full-time paid
4 peace officer, as defined in Chapter 4.5 (commencing with Section
5 830) of Title 3 of Part 2, and who is authorized to, and does carry
6 a firearm during the course and scope of employment as a peace
7 officer.

8 (6) Any motion picture, television, or video production company
9 or entertainment or theatrical company whose production by its
10 nature involves the use of a firearm.

11 (7) Any person who may, pursuant to Article 2 (commencing
12 with Section 27600), Article 3 (commencing with Section 27650),
13 *except for Section 27652*, or Article 4 (commencing with Section
14 27700), claim an exemption from the waiting period set forth in
15 Section 27540.

16 (8) Any transaction conducted through a licensed firearms dealer
17 pursuant to Chapter 5 (commencing with Section 28050).

18 (9) Any person who is licensed as a collector pursuant to Chapter
19 44 (commencing with Section 921) of Title 18 of the United States
20 Code and the regulations issued pursuant thereto, and has a current
21 certificate of eligibility issued by the Department of Justice
22 pursuant to Article 1 (commencing with Section 26700) of Chapter
23 2.

24 (10) The exchange of a handgun where the dealer purchased
25 that firearm from the person seeking the exchange within the
26 30-day period immediately preceding the date of exchange or
27 replacement.

28 (11) The replacement of a handgun when the person's handgun
29 was lost or stolen, and the person reported that firearm lost or
30 stolen prior to the completion of the application to purchase to any
31 local law enforcement agency of the city, county, or city and county
32 in which the person resides.

33 (12) The return of any handgun to its owner.

34 (13) A community college that is certified by the Commission
35 on Peace Officer Standards and Training to present the law
36 enforcement academy basic course or other commission-certified
37 law enforcement training.

38 ~~SEC. 2:~~

39 *SEC. 7.* Section 27652 is added to the Penal Code, to read:

1 27652. The waiting period described in *subdivision (a) of*
2 Section 27540 does not apply to ~~the~~ *the following*:

3 (a) *The sale, delivery, or transfer of firearms made to any person*
4 *who is authorized to carry a weapon in a concealed manner*
5 *pursuant to Chapter 4 (commencing with Section 26150) of*
6 *Division 5.*

7 (b) *The sale, delivery, or transfer of a firearm for personal use*
8 *made to a peace officer or retired peace officer identified in*
9 *subdivisions (a) to (d), inclusive, of Section 25450, who is*
10 *authorized to carry a weapon in a concealed manner pursuant to*
11 *Article 2 (commencing with Section 25450) of Chapter 2 of*
12 *Division 5.*

13 SEC. 8. *Section 28220 of the Penal Code is amended to read:*

14 28220. (a) Upon submission of firearm purchaser information,
15 the Department of Justice shall examine its records, as well as
16 those records that it is authorized to request from the State
17 Department of Mental Health pursuant to Section 8104 of the
18 Welfare and Institutions Code, in order to determine if the
19 purchaser is a person described in subdivision (a) of Section 27535,
20 or is prohibited by state or federal law from possessing, receiving,
21 owning, or purchasing a firearm.

22 (b) To the extent that funding is available, the Department of
23 Justice may participate in the National Instant Criminal Background
24 Check System (NICS), as described in subsection (t) of Section
25 922 of Title 18 of the United States Code, and, if that participation
26 is implemented, shall notify the dealer and the chief of the police
27 department of the city or city and county in which the sale was
28 made, or if the sale was made in a district in which there is no
29 municipal police department, the sheriff of the county in which
30 the sale was made, that the purchaser is a person prohibited from
31 acquiring a firearm under federal law.

32 (c) If the department determines that the purchaser is prohibited
33 by state or federal law from possessing, receiving, owning, or
34 purchasing a firearm or is a person described in subdivision (a) of
35 Section 27535, it shall immediately notify the dealer and the chief
36 of the police department of the city or city and county in which
37 the sale was made, or if the sale was made in a district in which
38 there is no municipal police department, the sheriff of the county
39 in which the sale was made, of that fact.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(f) (1) *The department shall immediately notify the dealer if the department determines that the status of the purchaser is approved or prohibited. If the status of the purchaser is not approved or prohibited, then the department shall, within 24 hours of the transmission of the electronic or telephonic record, respond with a hold status. If the department responds with a hold status, the department shall respond with an approved or prohibited status immediately upon completion of the department's background investigation.*

1 (2) For purposes of this section, the following terms have the
2 following meanings:

3 (A) “Approved” means the individual is not prohibited by state
4 or federal law from possessing, receiving, owning, or purchasing
5 a firearm.

6 (B) “On hold” means the available information indicates that
7 further investigation is required to determine whether the
8 individual is approved or prohibited from possessing, receiving,
9 owning, or purchasing a firearm.

10 (C) “Prohibited” means an individual is prohibited by state or
11 federal law from possessing, receiving, owning, or purchasing a
12 firearm.

13 (3) If a dealer receives a hold status, the dealer shall withhold
14 delivery of the firearm until the dealer receives an approved status
15 for the purchaser from the department.

16 SEC. 9. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.