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AB-857 Firearms: identifying information. (2015-2016)

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Assembly Bill No. 857

CHAPTER 60

An act to amend Sections 11106, 16520, 23910, and 30105 of, and to add Chapter 3 (commencing with Section 29180) to Division 7 of Title 4 of Part 6 of, the Penal Code, relating to firearms.

[Approved by Governor July 22, 2016. Filed with Secretary of State July 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 857, Cooper. Firearms: identifying information.

Existing law authorizes the Department of Justice to assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer's number or other mark of identification, or whenever the manufacturer's number or other mark of identification or distinguishing number or mark assigned by the department has been destroyed or obliterated.

This bill would, commencing July 1, 2018, and subject to exceptions, require a person who manufactures or assembles a firearm to first apply to the department for a unique serial number or other identifying mark, as provided. The bill would, by January 1, 2019, and subject to exceptions, require any person who, as of July 1, 2018, owns a firearm that does not bear a serial number to likewise apply to the department for a unique serial number or other mark of identification. The bill would, except as provided, prohibit the sale or transfer of ownership of a firearm manufactured or assembled pursuant to these provisions. The bill would prohibit a person from aiding in the manufacture or assembly of a firearm by a person who is prohibited from possessing a firearm. The bill would make a violation of these provisions a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

The bill would require the department to issue a serial number or other identifying mark to an applicant meeting specified criteria and would allow the department to charge a fee to recover its costs associated with assigning a distinguishing number or mark pursuant to the above provisions.

This bill would make a conforming change.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11106 of the Penal Code is amended to read:

11106. (a) (1) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (b), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all of the following:

(A) All copies of fingerprints.

(B) Copies of licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215.

(C) Information reported to the Department of Justice pursuant to Section 26225, 27875, 27920, 29180, or 29830.

(D) Dealers' records of sales of firearms.

(E) Reports provided pursuant to Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or pursuant to any provision listed in subdivision (a) of Section 16585.

(F) Forms provided pursuant to Section 12084, as that section read prior to being repealed on January 1, 2006.

(G) Reports provided pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, that are not dealers' records of sales of firearms.

(H) Information provided pursuant to Section 28255.

(I) Reports of stolen, lost, found, pledged, or pawned property in any city or county of this state.

(2) The Attorney General shall, upon proper application therefor, furnish the information to the officers referred to in Section 11105.

(b) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to the following provisions as to firearms and maintain a registry thereof:

(A) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(D) Any provision listed in subdivision (a) of Section 16585.

(E) Former Section 12084.

(F) Section 28255.

(G) Section 29180.

(H) Any other law.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular firearm as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former Section 12084, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585, Section 28255 or 29180, or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular firearm and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular firearm acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a serial number or any identification number or mark assigned to it, that shall be noted.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person listed in the registry as the owner or person who is listed as being loaned the particular firearm.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

(c) (1) If the conditions specified in paragraph (2) are met, any officer referred to in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 11105 may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to any of the following:

(A) Section 26225, 27875, or 27920.

(B) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(C) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(D) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(E) Article 2 (commencing with Section 28150) of Chapter 6 of Division 6 of Title 4 of Part 6.

(F) Article 5 (commencing with Section 30900) of Chapter 2 of Division 10 of Title 4 of Part 6.

(G) Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6.

(H) Any provision listed in subdivision (a) of Section 16585.

(2) Information may be disseminated pursuant to paragraph (1) only if all of the following conditions are satisfied:

(A) The subject of the record has been arraigned for a crime in which the victim is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the Family Code and is being prosecuted or is serving a sentence for the crime, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, which is in effect and has been issued by a family court under the Domestic Violence Protection Act set forth in Division 10 (commencing with Section 6200) of the Family Code.

(B) The information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(C) Whenever a law enforcement officer disseminates the information authorized by this subdivision, that officer or another officer assigned to the case shall immediately provide the victim of the crime with a "Victims of Domestic Violence" card, as specified in subparagraph (H) of paragraph (9) of subdivision (c) of Section 13701.

(3) The victim or person to whom information is disseminated pursuant to this subdivision may disclose it as he or she deems necessary to protect himself or herself or another person from bodily harm by the person who is the subject of the record.

SEC. 2. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

(1) Section 16550.

(2) Section 16730.

(3) Section 16960.

(4) Section 16990.

(5) Section 17070.

- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26600 to 27140, inclusive.
- (9) Sections 27400 to 28000, inclusive.
- (10) Section 28100.
- (11) Sections 28400 to 28415, inclusive.
- (12) Sections 29010 to 29150, inclusive.
- (13) Section 29180.
- (14) Sections 29610 to 29750, inclusive.
- (15) Sections 29800 to 29905, inclusive.
- (16) Sections 30150 to 30165, inclusive.
- (17) Section 31615.
- (18) Sections 31705 to 31830, inclusive.
- (19) Sections 34355 to 34370, inclusive.
- (20) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

- (1) Section 16750.
- (2) Subdivision (b) of Section 16840.
- (3) Section 25400.
- (4) Sections 25850 to 26025, inclusive.
- (5) Subdivisions (a), (b), and (c) of Section 26030.
- (6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

- (1) Subdivisions (a) and (c) of Section 16730.
- (2) Section 16550.
- (3) Section 16960.
- (4) Section 17310.
- (5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.
- (6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26700 to 26915, inclusive.
- (9) Section 27510.
- (10) Section 27530.
- (11) Section 27540.

(12) Section 27545.

(13) Sections 27555 to 27585, inclusive.

(14) Sections 29010 to 29150, inclusive.

(15) Section 25135.

(16) Section 29180.

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 3. Section 23910 of the Penal Code is amended to read:

23910. The Department of Justice, upon request, may assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer's number or other mark of identification. Whenever the manufacturer's number or other mark of identification or a distinguishing number or mark assigned by the department has been destroyed or obliterated, the Department of Justice, upon request, shall assign a distinguishing number or mark of identification to any firearm in accordance with Section 29182.

SEC. 4. Chapter 3 (commencing with Section 29180) is added to Division 7 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 3. Assembly of Firearms

29180. (a) For purposes of this chapter, "manufacturing" or "assembling" a firearm means to fabricate or construct a firearm, or to fit together the component parts of a firearm to construct a firearm.

(b) Commencing July 1, 2018, prior to manufacturing or assembling a firearm, a person manufacturing or assembling the firearm shall do all of the following:

(1) Apply to the Department of Justice for a unique serial number or other mark of identification pursuant to Section 29182.

(2) (A) Within 10 days of manufacturing or assembling a firearm in accordance with paragraph (1), the unique serial number or other mark of identification provided by the department shall be engraved or permanently affixed to the firearm in a manner that meets or exceeds the requirements imposed on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto.

(B) If the firearm is manufactured or assembled from polymer plastic, 3.7 ounces of material type 17-4 PH stainless steel shall be embedded within the plastic upon fabrication or construction with the unique serial number engraved or otherwise permanently affixed in a manner that meets or exceeds the requirements imposed on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto.

(3) After the serial number provided by the department is engraved or otherwise permanently affixed to the firearm, the person shall notify the department of that fact in a manner and within a time period specified by the department, and with sufficient information to identify the owner of the firearm, the unique serial number or mark of identification provided by the department, and the firearm in a manner prescribed by the department.

(c) By January 1, 2019, any person who, as of July 1, 2018, owns a firearm that does not bear a serial number assigned to it pursuant to either Section 23910 or pursuant to Chapter 44 (commencing with Section 921) of Part 1 of Title 18 of the United States Code and the regulations issued pursuant thereto, shall do all of the following:

(1) Apply to the Department of Justice for a unique serial number or other mark of identification pursuant to Section 29182.

(2) Within 10 days of receiving a unique serial number or other mark of identification from the department, the unique serial number or other mark of identification provided by the department shall be engraved or permanently affixed to the firearm in accordance with regulations prescribed by the department pursuant to Section 29182 and in a manner that meets or exceeds the requirements imposed on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto.

(3) After the serial number provided by the department is engraved or otherwise permanently affixed to the firearm, the person shall notify the department of that fact in a manner and within a time period specified by the department, and with sufficient information to identify the owner of the firearm, the unique serial number or mark of identification provided by the department, and the firearm in a manner prescribed by the department.

(d) (1) The sale or transfer of ownership of a firearm manufactured or assembled pursuant to this section is prohibited.

(2) Paragraph (1) shall not apply to the transfer, surrender, or sale of a firearm to a law enforcement agency.

(3) Any firearms surrendered, transferred, or sold to a local law enforcement agency pursuant to paragraph (2) shall be destroyed as provided in Section 18005.

(4) Sections 26500 and 27545, and subdivision (a) of Section 31615, shall not apply to the transfer, sale, or surrender of firearms to a law enforcement agency pursuant to paragraph (2).

(e) A person, corporation, or firm shall not knowingly allow, facilitate, aid, or abet the manufacture or assembling of a firearm pursuant to this section by a person who is within any of the classes identified by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(f) If the firearm is a handgun, a violation of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment. For all other firearms, a violation of this section is punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment. Each firearm found to be in violation of this section constitutes a distinct and separate offense. This section does not preclude prosecution under any other law providing for a greater penalty.

29181. Section 29180 does not apply to or affect any of the following:

(a) A firearm that has a serial number assigned to it pursuant to either Section 23910 or pursuant to Chapter 44 (commencing with Section 921) of Part 1 of Title 18 of the United States Code and the regulations issued pursuant thereto.

(b) A firearm made or assembled prior to December 16, 1968, that is not a handgun.

(c) A firearm which was entered into the centralized registry set forth in Section 11106 prior to July 1, 2018, as being owned by a specific individual or entity if that firearm has assigned to it a distinguishing number or mark of identification to that firearm by virtue of the department accepting entry of that firearm into the centralized registry.

(d) A firearm that has a serial number assigned to it pursuant to Chapter 53 of Title 26 of the United States Code and the regulations issued pursuant thereto.

(e) A firearm that is a curio or relic, or an antique firearm, as those terms are defined in Section 479.11 of Title 27 of the Code of Federal Regulations.

29182. (a) (1) The Department of Justice shall accept applications from, and shall grant applications in the form of serial numbers pursuant to Section 23910 to, persons who wish to manufacture or assemble firearms pursuant to subdivision (b) of Section 29180.

(2) The Department of Justice shall accept applications from, and shall grant applications in the form of serial numbers pursuant to Section 23910 to, persons who wish to own a firearm described in subdivision (c) of Section 29180.

(b) An application made pursuant to subdivision (a) shall only be granted by the department if the applicant does all of the following:

(1) For each transaction, completes a personal firearms eligibility check, demonstrating that the applicant is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) Presents proof of age and identity as specified in Section 16400. The applicant shall be 18 years of age or older to obtain a unique serial number or mark of identification for a firearm that is not a handgun, and shall be 21 years of age or older to obtain a unique serial number or mark of identification for a handgun.

(3) Provides a description of the firearm that he or she owns or intends to manufacture or assemble, in a manner prescribed by the department.

(4) Has a valid firearm safety certificate or handgun safety certificate.

- (c) The department shall inform applicants who are denied an application of the reasons for the denial in writing.
- (d) All applications shall be granted or denied within 15 calendar days of the receipt of the application by the department.
- (e) This chapter does not authorize a person to manufacture, assemble, or possess a weapon prohibited under Section 16590, an assault weapon as defined in Section 30510 or 30515, a machinegun as defined in Section 16880, a .50 BMG rifle as defined in Section 30530, or a destructive device as defined in Section 16460.
- (f) The department shall adopt regulations to administer this chapter.

29183. The Department of Justice may charge an applicant a fee for each distinguishing number or mark it issues in an amount sufficient to reimburse it for the actual costs associated with assigning a distinguishing number or mark to a firearm pursuant to Sections 29180 and 29182 and for conducting a personal firearms eligibility check pursuant to paragraph (1) of subdivision (b) of Section 29182. All money received pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, to be available upon appropriation by the Legislature.

29184. The Department of Justice shall maintain and make available upon request information concerning both of the following:

- (a) The number of serial numbers issued pursuant to Section 29182.
- (b) The number of arrests for violations of Section 29180.

SEC. 5. Section 30105 of the Penal Code is amended to read:

30105. (a) An individual may request that the Department of Justice perform a firearms eligibility check for that individual. The applicant requesting the eligibility check shall provide the personal information required by Section 28160 or 28165, as applicable, but not any information regarding any firearm, to the department, in an application specified by the department.

(b) The department shall charge a fee of twenty dollars (\$20) for performing the eligibility check authorized by this section, but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged may increase at a rate not to exceed the legislatively approved cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(c) An applicant for the eligibility check pursuant to subdivision (a) shall complete the application, have it notarized by any licensed California Notary Public, and submit it by mail to the department.

(d) Upon receipt of a notarized application and fee, the department shall do all of the following:

(1) Examine its records, and the records it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, to determine if the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) Notify the applicant by mail of its determination of whether the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. The department's notification shall state either "eligible to possess firearms as of the date the check was completed" or "ineligible to possess firearms as of the date the check was completed."

(e) If the department determines that the information submitted to it in the application contains any blank spaces, or inaccurate, illegible, or incomplete information, preventing identification of the applicant, or if the required fee is not submitted, the department shall not be required to perform the firearms eligibility check.

(f) The department shall make applications to conduct a firearms eligibility check as described in this section available to licensed firearms dealers and on the department's Internet Web site.

(g) The department shall be immune from any liability arising out of the performance of the firearms eligibility check, or any reliance upon the firearms eligibility check.

(h) Except as provided in Sections 29180 and 29182, a person or agency shall not require or request an individual to obtain a firearms eligibility check or notification of a firearms eligibility check pursuant to this section. A violation of this subdivision is a misdemeanor.

(i) The department shall include on the application specified in subdivision (a) and the notification of eligibility specified in subdivision (d) the following statements:

"No person or agency may require or request an individual to obtain a firearms eligibility check or notification of firearms eligibility check pursuant to Section 30105 of the Penal Code. A violation of these provisions is a misdemeanor."

"If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required."

SEC. 6. 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.