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SB-746 Firearms and ammunition: prohibited possession: transfer to licensed dealer. (2017-2018)

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Senate Bill No. 746

CHAPTER 780

An act to amend Sections 29180, 29182, and 29183 of, and to amend, repeal, and add Sections 16150, 29830, 33850, 33855, 33860, 33865, 33870, 33875, 33880, 33885, and 33895 of, the Penal Code, relating to firearms.

[Approved by Governor September 26, 2018. Filed with Secretary of State September 26, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 746, Portantino. Firearms and ammunition: prohibited possession: transfer to licensed dealer.

(1) Existing law prohibits a person who has been convicted of, or has an outstanding warrant for, a felony, or who is addicted to the use of any narcotic drug, from owning, purchasing, receiving, or possessing a firearm. Existing law prohibits a person who has been convicted of, or has an outstanding warrant for, certain misdemeanors, from owning, purchasing, receiving, or possessing a firearm, as specified. Existing law requires a person who is convicted of any of the above-described offenses to relinquish his or her firearms through the use of a designee, as specified. Existing law requires the designee to surrender the firearms to the control of a local law enforcement agency, sell the firearms to a licensed firearms dealer, or transfer the firearms for storage to a firearms dealer, as specified. Existing law generally allows any person who is prohibited from owning or possessing a firearm or ammunition to transfer his or her firearms or ammunition to a licensed firearms dealer for storage during the duration of the prohibition, as specified by court order. Existing law prescribes the procedure for a court or law enforcement agency in possession of a seized firearm to return the firearm to its lawful owner, as specified.

This bill would additionally authorize a person who has an outstanding warrant for a felony or misdemeanor, as described above, to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition, as specified. The bill would make the procedure for a court or law enforcement agency to return a seized firearm applicable to ammunition. The bill would additionally, commencing on July 1, 2020, make these provisions applicable to ammunition feeding devices, as defined, and, in some cases, ammunition. By increasing the duties of local law enforcement agencies, this bill would create a state-mandated local program. The bill makes other conforming changes.

(2) Existing law, subject to exceptions, requires a person who manufactures or assembles a firearm to first apply to the Department of Justice for a unique serial number or other identifying mark, as provided and subject to exceptions, and requires any person who 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. Existing law specifies that the provisions requiring a person who manufactures or assembles a firearm to apply for a unique serial number for that firearm do not authorize the person to manufacture, assemble, or possess, among other things, an assault weapon or a machinegun. A violation of these requirements is a crime.

This bill would require a new resident to the state to apply for a unique serial number within 60 days of arrival for any firearm the resident wishes to possess in the state that the resident previously manufactured or assembled, or a firearm the resident owns, that does not have a unique serial number. The bill would specify that the provisions requiring a person who manufactures or assembles a firearm to apply for a unique serial number for that firearm do not authorize the person to manufacture or assemble

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

(3) This bill would incorporate additional changes to Section 29182 of the Penal Code proposed by SB 1100 to be operative only if this bill and SB 1100 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 33855 of the Penal Code proposed by AB 2222 to be operative only if this bill and AB 2222 are enacted and this bill is enacted last.

(4) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. The Legislature hereby finds and declares both of the following:

(a) The intent expressed in the Safety for All Act of 2016 is to safeguard the ability of law-abiding, responsible Californians to own and use firearms for lawful means while requiring background checks for ammunition purchases in the manner required for firearm purchases so that neither firearms nor ammunition get into the hands of dangerous individuals.

(b) Insofar as this act amends the Safety for All Act of 2016, the amendments made by this act are consistent with and further that intent. The amendments ensure that ammunition and ammunition feeding devices in the possession of a court or law enforcement agency will only be transferred to a third party after that party undergoes a background check to determine that he or she is not prohibited from acquiring or having ammunition or ammunition feeding devices with appropriate records maintained of the transfer.

SEC. 2. Section 16150 of the Penal Code is amended to read:

16150. (a) As used in this part, except in subdivision (a) of Section 30305 and in Section 30306, "ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. "Ammunition" does not include blanks.

(b) As used in subdivision (a) of Section 30305 and in Section 30306, "ammunition" includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.

(c) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 3. Section 16150 is added to the Penal Code, to read:

16150. (a) As used in this part, except in subdivision (a) of Section 30305 and in Section 30306, "ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. "Ammunition" does not include blanks.

(b) As used in subdivision (a) of Section 30305 and in Section 30306, "ammunition" includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding device, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.

(c) This section shall become operative on July 1, 2020.

SEC. 4. Section 29180 of the Penal Code is amended to read:

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 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) does not apply to the transfer, surrender, or sale of a firearm to a law enforcement agency.

(3) Any firearms confiscated by law enforcement that do not bear an engraved serial number or other mark of identification pursuant to subdivision (b) or (c), or a firearm surrendered, transferred, or sold to a 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, do not apply to the transfer, sale, or surrender of firearms to a law enforcement agency pursuant to paragraph (2).

(e) A new resident to the state shall apply for a unique serial number or other mark of identification pursuant to Section 29182 within 60 days of arrival for any firearm the resident wishes to possess in the state that the resident previously manufactured or assembled or a firearm the resident owns, that does not have a unique serial number or other mark of identification.

(f) 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.

(g) 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.

SEC. 5. Section 29182 of the Penal Code is amended to read:

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 firearms eligibility check pursuant to Section 28220 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) (1) 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, a destructive device as defined in Section 16460.

(2) This chapter does not authorize a person, on or after July 1, 2018, to manufacture or assemble an unsafe handgun, as defined in Section 31910.

(f) The department shall adopt regulations to administer this chapter.

SEC. 5.5. Section 29182 of the Penal Code is amended to read:

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 firearms eligibility check pursuant to Section 28220 demonstrating that the applicant is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) (A) Presents proof of age and identity as specified in Section 16400. Except as provided in subparagraph (B), the applicant shall be 21 years of age or older to obtain a unique serial number or mark of identification for a firearm.

(B) The department shall grant an application to an applicant who is at least 18 years of age, but less than 21 years of age, for a serial number for a firearm that is not a handgun, if that application is made before February 1, 2019.

(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) (1) 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.

(2) This chapter does not authorize a person, on or after July 1, 2018, to manufacture or assemble an unsafe handgun, as defined in Section 31910.

(f) The department shall adopt regulations to administer this chapter.

SEC. 6. Section 29183 of the Penal Code is amended to read:

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 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.

SEC. 7. Section 29830 of the Penal Code is amended to read:

29830. (a) A person who is prohibited from owning or possessing a firearm or ammunition pursuant to any law, may transfer or cause to be transferred, any firearm or ammunition in his or her possession, or of which he or she is the owner, to a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, or may transfer ammunition to an ammunition vendor, licensed pursuant to Sections 30385 to 30395, inclusive, for storage during the duration of the prohibition, if the prohibition on owning or possessing the firearm or ammunition will expire on a specific ascertainable date, whether or not specified in the court order, or pursuant to Section 29800, 29805, or 29810.

(b) A firearms dealer or ammunition vendor who stores a firearm or ammunition pursuant to subdivision (a), may charge the owner a reasonable fee for the storage of the firearm or ammunition.

(c) A firearms dealer or ammunition vendor who stores a firearm or ammunition pursuant to subdivision (a) shall notify the Department of Justice of the date that the firearms dealer or ammunition vendor has taken possession of the firearm or ammunition.

(d) Any firearm that is returned by a dealer to the owner of the firearm pursuant to this section shall be returned in accordance with the procedures set forth in Section 27540 and Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6.

(e) Any ammunition that is returned by a firearms dealer or ammunition vendor to the owner of the ammunition pursuant to this section shall be returned in accordance with the procedures set forth in Article 4 (commencing with Section 30370) of Chapter 1 of Division 10.

(f) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 8. Section 29830 is added to the Penal Code, to read:

29830. (a) A person who is prohibited from owning or possessing a firearm, ammunition feeding device, or ammunition pursuant to any law, may transfer or cause to be transferred, any firearm, ammunition feeding device, or ammunition in his or her possession, or of which he or she is the owner, to a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, or may transfer ammunition to an ammunition vendor, licensed pursuant to Sections 30385 to 30395, inclusive, for storage during the duration of the prohibition, if the prohibition on owning or possessing the firearm, ammunition feeding device, or ammunition will expire on a specific ascertainable date, whether or not specified in the court order, or pursuant to Section 29800, 29805, or 29810.

(b) A firearms dealer or ammunition vendor who stores a firearm, ammunition feeding device, or ammunition pursuant to subdivision (a), may charge the owner a reasonable fee for the storage of the firearm, ammunition feeding device, or ammunition.

(c) A firearms dealer or ammunition vendor who stores a firearm, ammunition feeding device, or ammunition pursuant to subdivision (a) shall notify the Department of Justice of the date that the firearms dealer or ammunition vendor has taken possession of the firearm, ammunition feeding device, or ammunition.

(d) Any firearm that is returned by a dealer to the owner of the firearm pursuant to this section shall be returned in accordance with the procedures set forth in Section 27540 and Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6.

(e) Any ammunition that is returned by a firearms dealer or ammunition vendor to the owner of the ammunition pursuant to this section shall be returned in accordance with the procedures set forth in Article 4 (commencing with Section 30370) of Chapter 1

of Division 10.

(f) This section shall become operative on July 1, 2020.

SEC. 9. Section 33850 of the Penal Code is amended to read:

33850. (a) Any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned shall make application for a determination by the Department of Justice as to whether the applicant is eligible to possess a firearm. The application shall be submitted electronically via the California Firearms Application Reporting System (CFARS) and shall include the following:

(1) The applicant's name, date and place of birth, gender, telephone number, and complete address.

(2) Whether the applicant is a United States citizen. If the applicant is not a United States citizen, the application shall also include the applicant's country of citizenship and the applicant's alien registration or I-94 number.

(3) If the seized property is a firearm, the firearm's make, model, caliber, barrel length, type, country of origin, and serial number, provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, there shall be a place on the application to note that fact.

(4) For residents of California, the applicant's valid California driver's license number or valid California identification card number issued by the Department of Motor Vehicles. For nonresidents of California, a copy of the applicant's military identification with orders indicating that the individual is stationed in California, or a copy of the applicant's valid driver's license from the applicant's state of residence, or a copy of the applicant's state identification card from the applicant's state of residence. Copies of the documents provided by non-California residents shall be notarized.

(5) The name of the court or law enforcement agency holding the firearm.

(6) The signature of the applicant and the date of signature.

(7) Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the application, including any notarized information pursuant to paragraph (4), shall be guilty of a misdemeanor.

(b) A person who owns a firearm that is in the custody of a court or law enforcement agency and who does not wish to obtain possession of the firearm, and the firearm is an otherwise legal firearm, and the person otherwise has right to title of the firearm, shall be entitled to sell or transfer title of the firearm to a licensed dealer or a third party that is not prohibited from possessing that firearm. Any sale or transfer to a third party pursuant to this subdivision shall be conducted pursuant to Section 27545.

(c) A person who owns any ammunition that is in the custody of a court or a law enforcement agency and who does not wish to obtain possession of the ammunition, and the ammunition is otherwise legal, shall be entitled to sell or otherwise transfer the ammunition to a licensed firearms dealer or ammunition vendor or a third party that is not prohibited from possessing that ammunition. Any sale or other transfer of ammunition to a third party pursuant to subdivision (b) shall be conducted through an ammunition vendor in accordance with the procedures set forth in Article 4 (commencing with Section 30370) of Chapter 1 of Division 10.

(d) Any person furnishing a fictitious name or address, or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the application, including any notarized information pursuant to paragraph (4) of subdivision (a), is punishable as a misdemeanor.

(e) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 10. Section 33850 is added to the Penal Code, to read:

33850. (a) Any person who claims title to any firearm, ammunition feeding device, or ammunition that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm, ammunition feeding device, or ammunition returned shall make application for a determination by the Department of Justice as to whether the applicant is eligible to possess a firearm, ammunition feeding device, or ammunition. The application shall be submitted electronically via the California Firearms Application Reporting System (CFARS) and shall include the following:

(1) The applicant's name, date and place of birth, gender, telephone number, and complete address.

(2) Whether the applicant is a United States citizen. If the applicant is not a United States citizen, the application shall also include the applicant's country of citizenship and the applicant's alien registration or I-94 number.

(3) If the seized property is a firearm, the firearm's make, model, caliber, barrel length, type, country of origin, and serial number, provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, there shall be a place on the application to note that fact.

(4) For residents of California, the applicant's valid California driver's license number or valid California identification card number issued by the Department of Motor Vehicles. For nonresidents of California, a copy of the applicant's military identification with orders indicating that the individual is stationed in California, or a copy of the applicant's valid driver's license from the applicant's state of residence, or a copy of the applicant's state identification card from the applicant's state of residence. Copies of the documents provided by non-California residents shall be notarized.

(5) The name of the court or law enforcement agency holding the firearm, ammunition feeding device, or ammunition.

(6) The signature of the applicant and the date of signature.

(7) Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the application, including any notarized information pursuant to paragraph (4), shall be guilty of a misdemeanor.

(b) A person who owns a firearm that is in the custody of a court or law enforcement agency and who does not wish to obtain possession of the firearm, and the firearm is an otherwise legal firearm, and the person otherwise has right to title of the firearm, shall be entitled to sell or transfer title of the firearm to a licensed dealer or a third party that is not prohibited from possessing that firearm. Any sale or transfer to a third party pursuant to this subdivision shall be conducted pursuant to Section 27545.

(c) A person who owns an ammunition feeding device or ammunition that is in the custody of a court or a law enforcement agency and who does not wish to obtain possession of the ammunition or ammunition feeding device, and the ammunition feeding device or ammunition is otherwise legal, shall be entitled to sell or otherwise transfer the ammunition feeding device or ammunition to a licensed firearms dealer or ammunition vendor or a third party that is not prohibited from possessing that ammunition feeding device or ammunition. Any sale or other transfer of ammunition to a third party pursuant to subdivision (b) shall be conducted through an ammunition vendor in accordance with the procedures set forth in Article 4 (commencing with Section 30370) of Chapter 1 of Division 10.

(d) Any person furnishing a fictitious name or address, or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the application, including any notarized information pursuant to paragraph (4) of subdivision (a), is punishable as a misdemeanor.

(e) This section shall become operative on July 1, 2020.

SEC. 11. Section 33855 of the Penal Code is amended to read:

33855. A law enforcement agency or court that has taken custody of any firearm shall not return the firearm to any individual unless all of the following requirements are satisfied:

(a) The individual presents to the agency or court notification of a determination by the department pursuant to Section 33865 that the person is eligible to possess a firearm.

(b) If the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) If the firearm has been reported lost or stolen pursuant to Section 11108, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865.

(d) This section does not prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in Section 33880. However, an individual who is applying for a background check to retrieve a firearm that came into the custody or control of a court or law enforcement agency pursuant to Section 33850 shall be exempt from the fees in Section 33860, provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency, or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exemption in a manner prescribed by the department.

(e) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 12. Section 33855 is added to the Penal Code, to read:

33855. A law enforcement agency or court that has taken custody of any firearm, ammunition feeding device, or ammunition shall not return the firearm, ammunition feeding device, or ammunition to any individual unless all of the following requirements are satisfied:

(a) The individual presents to the agency or court notification of a determination by the department pursuant to Section 33865 that the person is eligible to possess a firearm, ammunition feeding device, or ammunition.

(b) If the seized property is a firearm and the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) If the firearm has been reported lost or stolen pursuant to Section 11108, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865.

(d) This section does not prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in Section 33880. However, an individual who is applying for a background check to retrieve a firearm that came into the custody or control of a court or law enforcement agency pursuant to Section 33850 shall be exempt from the fees in Section 33860, provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency, or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exemption in a manner prescribed by the department.

(e) This section shall become operative on July 1, 2020.

SEC. 12.1. Section 33855 of the Penal Code is amended to read:

33855. A law enforcement agency or court that has taken custody of any firearm shall not return the firearm to any individual unless all of the following requirements are satisfied:

(a) The individual presents to the agency or court notification of a determination by the department pursuant to Section 33865 that the person is eligible to possess a firearm.

(b) If the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108.2, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) If the firearm has been reported lost or stolen pursuant to Section 11108.2, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865.

(d) This section does not prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in Section 33880. However, an individual who is applying for a background check to retrieve a firearm that came into the custody or control of a court or law enforcement agency pursuant to Section 33850 shall be exempt from the fees in Section 33860, provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency, or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exemption in a manner prescribed by the department.

(e) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 12.2. Section 33855 is added to the Penal Code, to read:

33855. A law enforcement agency or court that has taken custody of any firearm, ammunition feeding device, or ammunition shall not return the firearm, ammunition feeding device, or ammunition to any individual unless all of the following requirements are satisfied:

(a) The individual presents to the agency or court notification of a determination by the department pursuant to Section 33865 that the person is eligible to possess a firearm, ammunition feeding device, or ammunition.

(b) If the seized property is a firearm and the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108.2, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) If the firearm has been reported lost or stolen pursuant to Section 11108.2, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865.

(d) This section does not prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in Section 33880. However, an individual who is applying for a background check to retrieve a firearm that came into the custody or control of a court or law enforcement agency pursuant to Section 33850 shall be exempt from the fees in Section 33860, provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency, or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exemption in a manner prescribed by the department.

(e) This section shall become operative on July 1, 2020.

SEC. 13. Section 33860 of the Penal Code is amended to read:

33860. (a) The Department of Justice shall establish a fee of twenty dollars (\$20) per request for return of a firearm, plus a three-dollar (\$3) charge for each additional firearm being processed as part of the request to return a firearm, to cover its reasonable costs for processing firearm clearance determinations submitted pursuant to this chapter.

(b) The fees collected pursuant to subdivision (a) shall be deposited into the Dealers' Record of Sale Special Account.

(c) The department shall annually review and shall adjust the fees specified in subdivision (a), if necessary, to fully fund, but not to exceed the reasonable costs of processing applications pursuant to this section.

(d) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 14. Section 33860 is added to the Penal Code, to read:

33860. (a) The Department of Justice shall establish a fee of twenty dollars (\$20) per request for return of a firearm, ammunition feeding device, or any quantity of ammunition plus a three-dollar (\$3) charge for each additional firearm being processed as part of the request to return a firearm, to cover its reasonable costs for processing applications submitted pursuant to this chapter.

(b) The fees collected pursuant to subdivision (a) shall be deposited into the Dealers' Record of Sale Special Account.

(c) The department shall annually review and shall adjust the fees specified in subdivision (a), if necessary, to fully fund, but not to exceed the reasonable costs of processing applications submitted pursuant to this section.

(d) This section shall become operative on July 1, 2020.

SEC. 15. Section 33865 of the Penal Code is amended to read:

33865. (a) When the Department of Justice receives a completed application pursuant to Section 33850 accompanied by the fee required pursuant to Section 33860, it shall conduct an eligibility check of the applicant to determine whether the applicant is eligible to possess a firearm.

(b) The department shall have 30 days from the date of receipt to complete the background check, unless the background check is delayed by circumstances beyond the control of the department. The applicant may contact the department via the California Firearms Application Reporting System (CFARS) to inquire about the reason for a delay.

(c) If the department determines that the applicant is eligible to possess the firearm, the department shall provide the applicant with written notification that includes the following:

(1) The identity of the applicant.

(2) A statement that the applicant is eligible to possess a firearm.

(3) A description of the firearm by make, model, and serial number, provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, that fact shall be noted.

(d) The department shall enter a record of the firearm into the Automated Firearms System (AFS), provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, that fact shall be noted in AFS.

(e) If the department denies the application, and the firearm is an otherwise legal firearm, the department shall notify the applicant of the denial and provide a form for the applicant to use to sell or transfer the firearm to a licensed dealer.

(f) If the department denies the application, the applicant shall receive notification via CFARS from the department explaining the reason for the denial and information regarding the appeal process.

(g) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 16. Section 33865 is added to the Penal Code, to read:

33865. (a) When the Department of Justice receives a completed application pursuant to Section 33850 accompanied by the fee required pursuant to Section 33860, it shall conduct an eligibility check of the applicant to determine whether the applicant is eligible to possess a firearm, ammunition feeding device, or ammunition.

(b) The department shall have 30 days from the date of receipt to complete the background check, unless the background check is delayed by circumstances beyond the control of the department. The applicant may contact the department via the California Firearms Application Reporting System (CFARS) to inquire about the reason for a delay.

(c) If the department determines that the applicant is eligible to possess the firearm, ammunition feeding device, or ammunition, the department shall provide the applicant with written notification that includes the following:

(1) The identity of the applicant.

(2) A statement that the applicant is eligible to possess a firearm, ammunition feeding device, or ammunition.

(3) If applicable, a description of the firearm by make, model, and serial number, provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, that fact shall be noted.

(d) The department shall enter a record of the firearm into the Automated Firearms System (AFS), provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, that fact shall be noted in AFS.

(e) If the department denies the application, and the firearm is an otherwise legal firearm, the department shall notify the applicant of the denial and provide a form for the applicant to use to sell or transfer the firearm to a licensed dealer.

(f) If the department denies the application, the applicant shall receive notification via CFARS from the department explaining the reason for the denial and information regarding the appeal process.

(g) This section shall become operative on July 1, 2020.

SEC. 17. Section 33870 of the Penal Code is amended to read:

33870. (a) If a law enforcement agency determines that the applicant is the legal owner of any firearm or ammunition deposited with the agency, that the applicant is prohibited from possessing any firearm or ammunition, and that the firearm or ammunition is otherwise legal, the applicant shall be entitled to sell or transfer the firearm or ammunition to a licensed firearms dealer, or licensed ammunition vendor, as applicable. If a law enforcement agency determines that the applicant is prohibited from owning or possessing any firearm or ammunition and the prohibition will expire on a specific ascertainable date, whether or not that date is specified in a court order, the applicant shall be entitled to have the firearm or ammunition stored by a licensed firearms dealer or licensed ammunition vendor, as applicable, for the duration of the prohibition period pursuant to Section 29830.

(b) If the firearm or ammunition has been lost or stolen, it shall be restored to the lawful owner pursuant to Section 11108.5 upon the owner's identification of the property, proof of ownership, and proof of eligibility to possess a firearm or ammunition pursuant to Section 33865.

(c) This section does not prevent the local law enforcement agency from charging the rightful owner of the property the fees described in Section 33880.

(d) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 18. Section 33870 is added to the Penal Code, to read:

33870. (a) If a law enforcement agency determines that the applicant is the legal owner of any firearm, ammunition feeding device, or ammunition deposited with the agency, that the applicant is prohibited from possessing any firearm, ammunition feeding device, or ammunition, and that the firearm, ammunition feeding device, or ammunition is otherwise legal, the applicant shall be entitled to sell or transfer the firearm, ammunition feeding device, or ammunition to a licensed firearms dealer, or licensed

ammunition vendor, as applicable. If a law enforcement agency determines that the applicant is prohibited from owning or possessing any firearm, ammunition feeding device, or ammunition and the prohibition will expire on a specific ascertainable date, whether or not that date is specified in a court order, the applicant shall be entitled to have the firearm, ammunition feeding device, or ammunition stored by a licensed firearms dealer or licensed ammunition vendor, as applicable, for the duration of the prohibition period pursuant to Section 29830.

(b) If the firearm, ammunition feeding device, or ammunition has been lost or stolen, it shall be restored to the lawful owner pursuant to Section 11108.5 upon the owner's identification of the property, proof of ownership, and proof of eligibility to possess a firearm, ammunition feeding device, or ammunition pursuant to Section 33865.

(c) This section does not prevent the local law enforcement agency from charging the rightful owner of the property the fees described in Section 33880.

(d) This section shall become operative on July 1, 2020.

SEC. 19. Section 33875 of the Penal Code is amended to read:

33875. (a) Notwithstanding any other law, no law enforcement agency or court shall be required to retain any firearm for more than 180 days after the owner has been notified by the court or law enforcement agency that the property has been made available for return. Any unclaimed firearm may be disposed of after the 180-day period has expired.

(b) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 20. Section 33875 is added to the Penal Code, to read:

33875. (a) Notwithstanding any other law, no law enforcement agency or court shall be required to retain any firearm, ammunition feeding device, or ammunition for more than 180 days after the owner has been notified by the court or law enforcement agency that the property has been made available for return. An unclaimed firearm, ammunition feeding device, or ammunition may be disposed of after the 180-day period has expired.

(b) This section shall become operative on July 1, 2020.

SEC. 21. Section 33880 of the Penal Code is amended to read:

33880. (a) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of any firearm or ammunition.

(b) The fee under subdivision (a) shall not exceed the actual costs incurred for the expenses directly related to taking possession of any firearm or ammunition, storing it, and surrendering possession of it to a licensed firearms dealer or to the owner.

(c) The administrative costs described in subdivisions (a) and (b) may be waived by the local or state agency upon verifiable proof that the firearm or ammunition was reported stolen at the time it came into the custody or control of the law enforcement agency.

(d) The following apply to any charges imposed for administrative costs pursuant to this section:

(1) The charges shall only be imposed on the person claiming title to the firearm or ammunition.

(2) Any charges shall be collected by the local or state authority only from the person claiming title to the firearm or ammunition.

(3) The charges shall be in addition to any other charges authorized or imposed pursuant to this code.

(4) A charge shall not be imposed for a hearing or appeal relating to the removal, impound, storage, or release of any firearm or ammunition, unless that hearing or appeal was requested in writing by the legal owner of the property. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.

(e) Costs for a hearing or appeal related to the release of any firearm or ammunition shall not be charged to the legal owner who redeems the property, unless the legal owner voluntarily requests the poststorage hearing or appeal. A city, county, city and county, or state agency shall not require a legal owner to request a poststorage hearing as a requirement for release of the firearm or ammunition to the legal owner.

(f) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 22. Section 33880 is added to the Penal Code, to read:

33880. (a) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of any firearm, ammunition feeding device, or ammunition.

(b) The fee under subdivision (a) shall not exceed the actual costs incurred for the expenses directly related to taking possession of any firearm, ammunition feeding device, or ammunition, storing it, and surrendering possession of it to a licensed firearms dealer or to the owner.

(c) The administrative costs described in subdivisions (a) and (b) may be waived by the local or state agency upon verifiable proof that the firearm, ammunition feeding device, or ammunition was reported stolen at the time it came into the custody or control of the law enforcement agency.

(d) The following apply to any charges imposed for administrative costs pursuant to this section:

(1) The charges shall only be imposed on the person claiming title to the firearm, ammunition feeding device, or ammunition.

(2) Any charges shall be collected by the local or state authority only from the person claiming title to the firearm, ammunition feeding device, or ammunition.

(3) The charges shall be in addition to any other charges authorized or imposed pursuant to this code.

(4) A charge shall not be imposed for a hearing or appeal relating to the removal, impound, storage, or release of any firearm, ammunition feeding device, or ammunition, unless that hearing or appeal was requested in writing by the legal owner of the property. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.

(e) Costs for a hearing or appeal related to the release of any firearm, ammunition feeding device, or ammunition shall not be charged to the legal owner who redeems the property, unless the legal owner voluntarily requests the poststorage hearing or appeal. A city, county, city and county, or state agency shall not require a legal owner to request a poststorage hearing as a requirement for release of the firearm, ammunition feeding device, or ammunition to the legal owner.

(f) This section shall become operative on July 1, 2020.

SEC. 23. Section 33885 of the Penal Code is amended to read:

33885. (a) In a proceeding for the return of any firearm seized and not returned pursuant to this chapter, where the defendant or cross-defendant is a law enforcement agency, the court shall award reasonable attorney's fees to the prevailing party.

(b) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 24. Section 33885 is added to the Penal Code, to read:

33885. (a) In a proceeding for the return of any firearm, ammunition feeding device, or ammunition seized and not returned pursuant to this chapter, where the defendant or cross-defendant is a law enforcement agency, the court shall award reasonable attorney's fees to the prevailing party.

(b) This section shall become operative on July 1, 2020.

SEC. 25. Section 33895 of the Penal Code is amended to read:

33895. (a) Section 27545 does not apply to deliveries, transfers, or returns of firearms made pursuant to this chapter.

(b) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 26. Section 33895 is added to the Penal Code, to read:

33895. (a) Section 27545 does not apply to deliveries, transfers, or returns of firearms made pursuant to this chapter.

(b) Sections 30312 and 30342 do not apply to deliveries or transfers of returns of ammunition or ammunition feeding devices by a court or law enforcement agency made pursuant to this chapter.

(c) This section shall become operative on July 1, 2020.

SEC. 27. Section 5.5 of this bill incorporates amendments to Section 29182 of the Penal Code proposed by both this bill and Senate Bill 1100. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or

before January 1, 2019, (2) each bill amends Section 29182 of the Penal Code, and (3) this bill is enacted after Senate Bill 1100, in which case Section 5 of this bill shall not become operative.

SEC. 28. Sections 12.1 and 12.2 of this bill incorporate amendments to Section 33855 of the Penal Code proposed by both this bill and Assembly Bill 2222. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 33855 of the Penal Code, and (3) this bill is enacted after Assembly Bill 222, in which case Sections 11 and 12 of this bill shall not become operative.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, 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.

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