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SB-1177 Firearms: transfers. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

NO. 1177

Introduced by Senator Portantino

February 14, 2018

An act to amend Sections 26835, 27535, 27540, and 27590 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1177, Portantino. Firearms: transfers.

Existing law, subject to exceptions, prohibits a person from making more than one application to purchase a handgun within any 30-day period. A violation of that prohibition is a crime. Existing law prohibits a firearms dealer from delivering a handgun to a person whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a handgun that does not fall within an exception to the 30-day prohibition. A violation of that delivery prohibition by the dealer is a crime.

This bill would make the 30-day prohibition and the dealer delivery prohibition described above applicable to all types of firearms. The bill would also except from that prohibition the purchase of a firearm, other than a handgun, by a person who possesses a valid, unexpired hunting license issued by the state, and the acquisition of a firearm, other than a handgun, at specified charity fundraising events.

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

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.

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

SECTION 1. Section 26835 of the Penal Code, as added by Section 3 of Chapter 825 of the Statutes of 2017, is amended to read:

26835. A licensee shall conspicuously post within the licensed premises the following warnings in block letters not less than one inch in height:

(a) "FIREARMS MUST BE HANDLED RESPONSIBLY AND SECURELY STORED TO PREVENT ACCESS BY CHILDREN AND OTHER UNAUTHORIZED USERS. CALIFORNIA HAS STRICT LAWS PERTAINING TO FIREARMS, AND YOU MAY BE FINED OR IMPRISONED IF YOU FAIL TO COMPLY WITH THEM. VISIT THE WEB SITE OF THE CALIFORNIA ATTORNEY GENERAL AT [HTTPS://OAG.CA.GOV/FIREARMS](https://oag.ca.gov/firearms) FOR INFORMATION ON FIREARM LAWS APPLICABLE TO YOU AND HOW YOU CAN COMPLY."

(b) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(c) "CHILDREN MAY BE UNABLE TO DISTINGUISH FIREARMS FROM TOYS AND MAY OPERATE FIREARMS, CAUSING SEVERE INJURIES OR DEATH. IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(d) "YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A SIGNIFICANT FINE OR IMPRISONMENT, IF YOU KEEP A FIREARM WHERE A MINOR IS LIKELY TO ACCESS IT OR IF A MINOR OBTAINS AND IMPROPERLY USES IT, OR CARRIES IT OFF OF THE PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(e) "IF YOU NEGLIGENTLY STORE OR LEAVE A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, WHERE A PERSON UNDER 18 YEARS OF AGE IS LIKELY TO ACCESS IT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A SIGNIFICANT FINE, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(f) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(g) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(h) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE FIREARM WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE FIREARM WITHIN ANY 30-DAY PERIOD."

(i) "IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN FIVE DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN."

SEC. 2. Section 27535 of the Penal Code is amended to read:

27535. (a) A person shall not make an application to purchase more than one firearm within any 30-day period.

(b) Subdivision (a) does 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.

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

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

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

(7) Any person who may, pursuant to Article 2 (commencing with Section 27600), Article 3 (commencing with Section 27650), or Article 4 (commencing with Section 27700), claim an exemption from the waiting period set forth in Section 27540.

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

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

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

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

(12) The return of any firearm to its owner.

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

(14) The purchase of a firearm, other than a handgun, by a person who possesses a valid, unexpired hunting license issued by the Department of Fish and Wildlife.

(15) The acquisition of a firearm, other than a handgun, at an auction or similar event conducted by a nonprofit public benefit or mutual benefit corporation to fund the activities of that corporation or local chapters of that corporation.

(c) For the purposes of paragraphs (14) and (15) of subdivision (b), the frame or receiver of a firearm is a handgun unless the frame or receiver listed in the application to purchase and delivered to the recipient is equipped with, is attached to, or is concurrently accompanied by, a barrel of 16 inches or greater in length.

SEC. 3. Section 27540 of the Penal Code is amended to read:

27540. A dealer, whether or not acting pursuant to Chapter 5 (commencing with Section 28050), shall not deliver a firearm to a person, as follows:

(a) Within 10 days of the application to purchase, or, after notice by the department pursuant to Section 28220, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to Section 28225, whichever is later.

(b) Unless unloaded and securely wrapped or unloaded and in a locked container.

(c) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of the person's identity and age to the dealer.

(d) Whenever the dealer is notified by the Department of Justice that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(e) A firearm, including a handgun, shall not be delivered unless the purchaser, transferee, or person being loaned the firearm presents a firearm safety certificate to the dealer, except that in the case of a handgun, an unexpired handgun safety certificate may be presented.

(f) A firearm shall not be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a firearm and that the previous application to purchase did not involve any of the entities or circumstances specified in subdivision (b) of Section 27535.

SEC. 4. Section 27590 of the Penal Code is amended to read:

27590. (a) Except as provided in subdivision (b), (c), or (e), a violation of this article is a misdemeanor.

(b) If any of the following circumstances apply, a violation of this article is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years:

(1) If the violation is of subdivision (a) of Section 27500.

(2) If the defendant has a prior conviction of violating the provisions, other than Section 27535, Section 27560 involving a firearm that is not a handgun, or Section 27565 involving a firearm that is not a handgun, of this article or former Section 12100 of this code, as Section 12100 read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, or Section 8101 of the Welfare and Institutions Code.

(3) If the defendant has a prior conviction of violating any offense specified in Section 29905 or of a violation of Section 32625 or 33410, or of former Section 12560, as that section read at any time from when it was enacted by Section 4 of Chapter 931 of the Statutes of 1965 to when it was repealed by Section 14 of Chapter 9 of the Statutes of 1990, or of any provision listed in Section 16590.

(4) If the defendant is in a prohibited class described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) A violation of this article by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(6) A violation of Section 27510 involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(c) If any of the following circumstances apply, a violation of this article shall be punished by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment:

(1) A violation of Section 27515, 27520, or subdivision (b) of Section 27500.

(2) A violation of Section 27505 involving the sale, loan, or transfer of a handgun to a minor.

(3) A violation of Section 27510 involving the delivery of a handgun.

(4) A violation of subdivision (a), (c), (d), (e), or (f) of Section 27540 involving a handgun.

(5) A violation of Section 27545 involving a handgun.

(6) A violation of Section 27550.

(7) A violation of Section 27585 involving a handgun.

(d) If both of the following circumstances apply, an additional term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed:

(1) A violation of Section 27510 or subdivision (b) of Section 27500.

(2) The firearm transferred in violation of Section 27510 or subdivision (b) of Section 27500 is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

(e) (1) A first violation of Section 27535 is an infraction punishable by a fine of fifty dollars (\$50).

(2) A second violation of Section 27535 is an infraction punishable by a fine of one hundred dollars (\$100).

(3) A third or subsequent violation of Section 27535 is a misdemeanor.

(4) For purposes of this subdivision, each application to purchase a firearm in violation of Section 27535 is a separate offense.

SEC. 5. 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.