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AB-1406 Firearms: waiting periods. (2023-2024)

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Assembly Bill No. 1406

CHAPTER 244

An act to amend Section 28220 of the Penal Code, relating to firearms.

[Approved by Governor September 26, 2023. Filed with Secretary of State September 26, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1406, McCarty. Firearms: waiting periods.

Existing law requires every sale or transfer of a firearm to be processed through a licensed dealer. Existing law requires the dealer to obtain specified information about the purchaser and forward that information to the Department of Justice, as specified. Existing law prohibits a dealer from delivering a firearm within 10 days after the application to purchase, as specified.

Existing law requires the department, upon receiving the information about a firearm purchaser, to examine specified records and notify the dealer if the person is prohibited from possessing a firearm or, if specified records are incomplete, to request that the dealer delay delivery of the firearm until that information can be verified.

This bill would authorize the department to request a delay of the delivery of a firearm if additional research is required to determine a person's eligibility, as specified.

This bill would additionally authorize the department to request a delay of the delivery of a firearm for up to 30 days if an emergency, as defined, has caused the department to be unable to review records to determine a purchaser's eligibility to purchase, receive, own, or possess a firearm prior to the conclusion of the waiting period.

This bill would, if a firearm being sold or transferred is reported as lost or stolen, require the department to reject the transaction and notify the law enforcement agency that reported the firearm as lost or stolen. The bill would require the dealer to hold the firearm and require that law enforcement agency to retrieve the firearm from the dealer, as specified. By requiring the law enforcement agency to retrieve the firearm, this bill would impose a state-mandated local program.

This bill would also make changes to the notification procedures to purchasers regarding rejected or delayed background checks, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to 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. Section 28220 of the Penal Code is amended to read:

28220. (a) (1) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) Commencing July 1, 2025, for the sale or transfer of a firearm to a person under 21 years of age pursuant to subdivision (b) of Section 27510, the Department of Justice shall verify the validity of the purchaser's hunting license with the Department of Fish and Wildlife.

(b) The Department of Justice shall participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall do both of the following:

(1) Immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(2) Notify the purchaser and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser may report any inaccuracies or incompleteness to the department on an approved form.

(d) If the firearm matches an entry in the registry described in Section 11106 indicating the firearm is stolen, the department shall immediately do all of the following:

(1) Reject the purchase.

(2) Notify the dealer that the firearm matches an entry in the registry described in Section 11106 indicating the firearm is stolen and that the dealer shall retain the firearm until a law enforcement agency is able to retrieve the firearm.

(3) Notify the law enforcement agency that made the stolen entry that the firearm has been located. The reporting agency shall retrieve the firearm from the dealer and report the firearm's recovery pursuant to Sections 11108.2, 11108.3, and 11108.5. A reporting agency may comply with this section by arranging to have another state or local law enforcement agency retrieve the firearm on their behalf.

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

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

(g) (1) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

(A) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(B) The purchaser has been arrested for, or charged with, a crime that would make the purchaser, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(C) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(D) The purchaser may be prohibited from possessing, receiving, owning or purchasing a firearm, and the purchaser's eligibility to possess, receive, own, or purchase a firearm cannot be ascertained without further research regarding the effect of past criminal convictions or mental health confinements on the purchaser's eligibility, or without obtaining additional records that could not be obtained prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(2) The department shall notify the purchaser by mail or by other means as determined by the department regarding the delay. This paragraph does not apply to any delivery that has been delayed pursuant to paragraph (6).

(3) If the department is able to ascertain the purchaser's eligibility to possess, receive, own, or purchase a firearm, for any of the reasons described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

(A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to the purchaser.

(B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact in compliance with subdivision (c).

(4) If the department is unable to ascertain the purchaser's eligibility to possess, receive, own, or purchase a firearm for any of the reasons described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately do both of the following:

(A) Notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to the purchaser.

(B) Notify the purchaser of the department's inability to ascertain the purchaser's eligibility to possess, receive, own, or purchase a firearm and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser may report any inaccuracies or incompleteness to the department on an approved form.

(5) Commencing July 1, 2025, if the department is unable to ascertain the validity of a hunting license required pursuant to Section 27510, the department shall immediately notify the dealer to cancel the sale of the firearm. The department shall notify the purchaser by mail or by other means as determined by the department, that the hunting license was not valid and unexpired or the Department of Fish and Wildlife was unable to verify the license based upon the information provided.

(6) If, as determined by order of the Attorney General, an emergency of the type described in Section 8558 of the Government Code has caused the department to be unable to obtain or review records to determine a purchaser's eligibility to purchase, receive, own, or possess a firearm prior to the conclusion of the waiting period described in Sections 26815 and 27540, the department may notify the dealer to delay the transfer of the firearm to the purchaser up to 30 days after the dealer's original submission of purchaser information to the department.

(h) (1) Upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the department shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.

(2) This subdivision does not prohibit the department from sharing information pertaining to a person that is prohibited from possessing a firearm if the department is otherwise expressly authorized or required by state law to share that information with the recipient party.

SEC. 2. If the Commission on State Mandates determines that this act contains 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.