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AB-2739 Firearms. (2023-2024)

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Date Published: 09/25/2024 02:00 PM

Assembly Bill No. 2739

CHAPTER 534

An act to amend Sections 18000 and 18005 of, and to add Article 6 (commencing with Section 26110) to Chapter 3 of, and Article 3 (commencing with Section 26395) to Chapter 6 of, Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.

[Approved by Governor September 24, 2024. Filed with Secretary of State September 24, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2739, Maienschein. Firearms.

Existing law prohibits the carrying of a concealed firearm, as specified and except as exempted. Under existing law, a handgun carried in violation of this provision is a nuisance and is subject to forfeiture and destruction, as specified.

Existing law also prohibits carrying a loaded firearm in public, as specified and except as exempted, and openly carrying an unloaded handgun in public, as specified and except as exempted.

This bill would deem any firearm carried in violation of either of these provisions to be a nuisance and subject to forfeiture and destruction, as specified.

By requiring additional firearms to be forfeited to and destroyed by local law enforcement agencies, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 18005 of the Penal Code proposed by SB 1019 and AB 2842 to be operative only if this bill and either one or both of those bills are enacted and this bill is enacted last.

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 18000 of the Penal Code is amended to read:

18000. (a) Any weapon described in Section 19190, 21390, 21590, 25700, 26110, or 26395, or, upon conviction of the defendant or upon a juvenile court finding that an offense that would be a misdemeanor or felony if committed by an adult was committed or

attempted by the juvenile with the use of a firearm, any weapon described in Section 29300, shall be surrendered to one of the following:

- (1) The sheriff of a county.
- (2) The chief of police or other head of a municipal police department of any city or city and county.
- (3) The chief of police of any campus of the University of California or the California State University.
- (4) The Commissioner of the California Highway Patrol.

(b) For purposes of this section, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol.

(c) A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

SEC. 2. Section 18005 of the Penal Code is amended to read:

18005. (a) An officer to whom a weapon is surrendered under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, shall destroy that weapon and, if applicable, submit proof of its destruction to the court.

(b) If any weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, or is used in a manner as to constitute a nuisance under Section 19190, 21390, 21590, 25700, 26110, 26395, or 29300, without the prior knowledge of its lawful owner that it would be so used, it shall not be destroyed pursuant to subdivision (a) but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

(c) No stolen weapon shall be destroyed pursuant to subdivision (a) unless reasonable notice is given to its lawful owner, if the lawful owner's identity and address can be reasonably ascertained.

(d) If the weapon was evidence in a criminal case, the weapon shall be retained as required by Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

SEC. 2.1. Section 18005 of the Penal Code is amended to read:

18005. (a) An officer to whom a weapon is surrendered under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, shall destroy that weapon and, if applicable, submit proof of its destruction to the court.

(b) If any weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, or is used in a manner as to constitute a nuisance under Section 19190, 21390, 21590, 25700, 26110, 26395, or 29300, without the prior knowledge of its lawful owner that it would be so used, it shall not be destroyed pursuant to subdivision (a) but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

(c) No stolen weapon shall be destroyed pursuant to subdivision (a) unless reasonable notice is given to its lawful owner, if the lawful owner's identity and address can be reasonably ascertained.

(d) If the weapon was evidence in a criminal case, the weapon shall be retained as required by Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

(e) (1) Every law enforcement agency shall develop and maintain a written policy on the destruction of firearms and other weapons including, without limitation, policies for identifying firearms and other weapons that are required to be destroyed, keeping records of those firearms and other weapons, including entry into the Automated Firearms System, as applicable, and the destruction and disposal of those firearms and other weapons. A law enforcement agency that either contracts with, or operates under, a memorandum of understanding (MOU) with another agency for the storage or destruction of weapons or other firearms shall have a policy identifying the other agency and outlining the responsibilities of both agencies under the contract or MOU.

- (2) Every law enforcement agency shall post the policy required by this subdivision on its internet website.

(f) As used in this section, the following terms are defined as follows:

(1) "Destroy" means to destroy a firearm or other weapon in its entirety by smelting, shredding, crushing, or cutting and shall include all parts including, without limitation, the frame or receiver, barrel, bolt, and grip of a firearm, as applicable, and any attachments including, but not limited to, a sight, scope, silencer, or suppressor, as applicable.

(2) "Law enforcement agency" means any police department, sheriffs' department, or other department or agency of the state, or any political subdivision thereof, that employs any peace officer as described in Section 830.

(g) A law enforcement agency that had an existing contract with another person or entity for the destruction of firearms or other weapons prior to November 1, 2024, is not required to destroy a weapon pursuant to the requirements of subdivision (e) or (f) if any of those requirements would require the law enforcement agency to breach its contract with the other person or entity.

SEC. 2.3. Section 18005 of the Penal Code is amended to read:

18005. (a) An officer to whom a weapon is surrendered under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, shall destroy that weapon and, if applicable, submit proof of its destruction to the court.

(b) If any weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, or is used in a manner as to constitute a nuisance under Section 19190, 21390, 21590, 25700, 26110, 26395, or 29300, without the prior knowledge of its lawful owner that it would be so used, it shall not be destroyed pursuant to subdivision (a) but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

(c) No stolen weapon shall be destroyed pursuant to subdivision (a) unless reasonable notice is given to its lawful owner, if the lawful owner's identity and address can be reasonably ascertained.

(d) If the weapon was evidence in a criminal case, the weapon shall be retained as required by Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

(e) (1) If a law enforcement agency contracts with a third party for the destruction of firearms or other weapons pursuant to this section or any other related law, the agency shall ensure that any such contract explicitly prohibits the sale of any firearm or weapon, or any part or attachment thereof.

(2) This subdivision is not intended to prohibit the recycling, or sale for the purpose of recycling, of any scrap metal or other material resulting from the destruction of a firearm or other weapon.

SEC. 2.5. Section 18005 of the Penal Code is amended to read:

18005. (a) An officer to whom a weapon is surrendered under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, shall destroy that weapon and, if applicable, submit proof of its destruction to the court.

(b) If any weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, or is used in a manner as to constitute a nuisance under Section 19190, 21390, 21590, 25700, 26110, 26395, or 29300, without the prior knowledge of its lawful owner that it would be so used, it shall not be destroyed pursuant to subdivision (a) but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

(c) No stolen weapon shall be destroyed pursuant to subdivision (a) unless reasonable notice is given to its lawful owner, if the lawful owner's identity and address can be reasonably ascertained.

(d) If the weapon was evidence in a criminal case, the weapon shall be retained as required by Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

(e) (1) Every law enforcement agency shall develop and maintain a written policy on the destruction of firearms and other weapons including, without limitation, policies for identifying firearms and other weapons that are required to be destroyed, keeping records of those firearms and other weapons, including entry into the Automated Firearms System, as applicable, and the destruction and disposal of those firearms and other weapons. A law enforcement agency that either contracts with, or operates under, a memorandum of understanding (MOU) with another agency for the storage or destruction of weapons or other

firearms shall have a policy identifying the other agency and outlining the responsibilities of both agencies under the contract or MOU.

(2) Every law enforcement agency shall post the policy required by this subdivision on its internet website.

(f) As used in this section, the following terms are defined as follows:

(1) "Destroy" means to destroy a firearm or other weapon in its entirety by smelting, shredding, crushing, or cutting and shall include all parts including, without limitation, the frame or receiver, barrel, bolt, and grip of a firearm, as applicable, and any attachments including, but not limited to, a sight, scope, silencer, or suppressor, as applicable.

(2) "Law enforcement agency" means any police department, sheriffs' department, or other department or agency of the state, or any political subdivision thereof, that employs any peace officer as described in Section 830.

(g) (1) If a law enforcement agency contracts with a third party for the destruction of firearms or other weapons pursuant to this section or any other related law, the agency shall ensure that any such contract explicitly prohibits the sale of any firearm or weapon, or any part or attachment thereof.

(2) This subdivision is not intended to prohibit the recycling, or sale for the purpose of recycling, of any scrap metal or other material resulting from the destruction of a firearm or other weapon.

(h) A law enforcement agency that had an existing contract with another person or entity for the destruction of firearms or other weapons prior to November 1, 2024, is not required to destroy a weapon pursuant to the requirements of subdivision (e) or (f) if any of those requirements would require the law enforcement agency to breach its contract with the other person or entity.

SEC. 3. Article 6 (commencing with Section 26110) is added to Chapter 3 of Division 5 of Title 4 of Part 6 of the Penal Code, to read:

Article 6. Carrying a Loaded Firearm as a Nuisance

26110. (a) The unlawful carrying of any firearm in violation of Section 25850 is a nuisance and is subject to Sections 18000 and 18005.

(b) This section does not apply to either of the following:

(1) Any firearm that was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto.

(2) Any firearm that is forfeited pursuant to Section 5008.6 of the Public Resources Code.

SEC. 4. Article 3 (commencing with Section 26395) is added to Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, to read:

Article 3. Openly Carrying an Unloaded Handgun as a Nuisance

26395. (a) The unlawful carrying of any handgun in violation of Section 26350 is a nuisance and is subject to Sections 18000 and 18005.

(b) This section does not apply to either of the following:

(1) Any firearm that was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto.

(2) Any firearm that is forfeited pursuant to Section 5008.6 of the Public Resources Code.

SEC. 5. (a) Section 2.1 of this bill incorporates amendments to Section 18005 of the Penal Code proposed by both this bill and Senate Bill 1019. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 18005 of the Penal Code, (3) Assembly Bill 2842 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 1019, in which case Sections 2, 2.3, and 2.5 of this bill shall not become operative.

(b) Section 2.3 of this bill incorporates amendments to Section 18005 of the Penal Code proposed by both this bill and Assembly Bill 2842. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 18005 of the Penal Code, (3) Senate Bill 1019 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2842 in which case Sections 2, 2.1, and 2.5 of this bill shall not become operative.

(c) Section 2.5 of this bill incorporates amendments to Section 18005 of the Penal Code proposed by this bill, Senate Bill 1019, and Assembly Bill 2842. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2025, (2) all three bills amend Section 18005 of the Penal Code, and (3) this bill is enacted after Senate Bill 1019 and Assembly Bill 2842, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

SEC. 6. 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.