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AB-2842 Firearms. (2023-2024)

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Assembly Bill No. 2842

CHAPTER 537

An act to amend Sections 18005 and 26576 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 2842, Papan. Firearms.

Existing law requires that a weapon acquired by a specified governmental entity under specified circumstances, including as part of a "gun-buyback" program, be destroyed.

This bill would require a law enforcement agency that contracts with a third party for the destruction of firearms or weapons to ensure that the contract for those services prohibits the sale of any parts of, or attachments to, the firearm or other weapon, as specified.

The bill would also exempt from the destruction requirement, any firearm obtained through a "gun-buyback" program that is donated to a historical society, museum, or institutional collection, as specified.

By requiring a higher level of service for local 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 2739 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 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, or 29300, or subdivision (a) of Section 25700 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. 1.1. 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, or 29300, or subdivision (a) of Section 25700 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. 1.3. 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. 1.5. 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. 2. Section 26576 of the Penal Code is amended to read:

26576. (a) Section 26500 does not apply to a sale, delivery, or transfer of firearms if both of the following requirements are satisfied:

(1) The sale, delivery, or transfer is to an authorized representative of a city, city and county, county, or state government, or of the federal government, and is for the governmental entity.

(2) The entity is acquiring the firearm as part of an authorized, voluntary program in which the entity is buying or receiving firearms from private individuals.

(b) Any weapons acquired pursuant to subdivision (a) of this section shall be disposed of pursuant to the applicable provisions of Section 34000 or Sections 18000 and 18005.

(c) (1) Notwithstanding subdivision (b), a firearm acquired pursuant to subdivision (a) may, in lieu of destruction, be donated to a public or private nonprofit historical society, museum, or institutional collection, subject to the provisions of Section 27855, including that the firearm be deactivated or rendered inoperable before delivery.

(2) For purposes of this and other sections in this title, "deactivated or rendered inoperable" means to render the firearm permanently inoperable by means including, without limitation, welding of the chamber, cutting of the barrel, chamber, or breech, plugging the barrel, or welding the bolt to the chamber.

SEC. 3. (a) Section 1.1 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 2739 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 1, 1.3, and 1.5 of this bill shall not become operative.

(b) Section 1.3 of this bill incorporates amendments to Section 18005 of the Penal Code proposed by both this bill and Assembly Bill 2739. 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 2739 in which case Sections 1, 1.1, and 1.5 of this bill shall not become operative.

(c) Section 1.5 of this bill incorporates amendments to Section 18005 of the Penal Code proposed by this bill, Senate Bill 1019, and Assembly Bill 2739. 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 2739, in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

SEC. 4. 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.