

ASSEMBLY BILL

No. 539

Introduced by Assembly Member Pan

February 20, 2013

An act to amend Sections 29810, 29825, 29850, and 33870 of, and to add Section 29830 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 539, as introduced, Pan. Firearm possession: prohibitions: transfer to licensed dealer.

Existing law prohibits specified persons, including persons convicted of specified crimes, persons addicted to the use of any narcotic drug, certain probationers, and persons against whom specified restraining orders or injunctions apply, from possessing a firearm. Under existing law a violation of these provisions is justified if the person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law, if certain requirements are met. Existing law allows a firearm that is in the custody of a law enforcement agency to be sold or transferred to a licensed dealer if the law enforcement agency determines that the legal owner of the firearm is prohibited from possessing the firearm. Existing law requires that a person prohibited from possessing a firearm pursuant to certain provisions of law to be notified and provided with a form to facilitate the transfer of firearms. Existing law requires the Judicial Counsel to provide notice on all protective orders that the respondent is prohibited from possessing a firearm while the protective order is in effect and that the firearm shall be relinquished to a local law enforcement agency or a licensed firearms dealer.

This bill would allow anyone who is prohibited from owning or possessing a firearm pursuant to the above provisions or any other provision of law to transfer any firearm or firearms in his or her possession, or of which he or she is the owner, to a licensed firearms dealer for the duration of the prohibition if the prohibition on owning or possessing the firearm will expires on a date specified the court order. The bill would make conforming changes to the above provisions. Because the bill would impose certain requirements on local agencies relating to the transfer of firearms to a licensed firearms dealer, the 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.

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 these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 29810 of the Penal Code is amended to
2 read:
3 29810. (a) For any person who is subject to Section 29800 or
4 29805, the court shall, at the time judgment is imposed, provide
5 on a form supplied by the Department of Justice, a notice to the
6 defendant prohibited by this chapter from owning, purchasing,
7 receiving, possessing, or having under custody or control, any
8 firearm. The notice shall inform the defendant of the prohibition
9 regarding firearms and include a form to facilitate the transfer of
10 firearms. *If the prohibition on owning or possessing a firearm will*
11 *expire on a date specified in the court order, the form shall inform*
12 *the defendant that he or she may elect to have his or her firearm*
13 *transferred to a firearms dealer licensed pursuant to Section 29830.*
14 (b) Failure to provide the notice described in subdivision (a)
15 ~~shall is not be~~ a defense to a violation of this chapter.
16 SEC. 2. Section 29825 of the Penal Code is amended to read:
17 29825. (a) Every person who purchases or receives, or attempts
18 to purchase or receive, a firearm knowing that the person is

1 prohibited from doing so by a temporary restraining order or
2 injunction issued pursuant to Section 527.6, 527.8, or 527.85 of
3 the Code of Civil Procedure, a protective order as defined in
4 Section 6218 of the Family Code, a protective order issued pursuant
5 to Section 136.2 or 646.91 of this code, or a protective order issued
6 pursuant to Section 15657.03 of the Welfare and Institutions Code,
7 is guilty of a public offense, which shall be punishable by
8 imprisonment in a county jail not exceeding one year or in the
9 state prison, by a fine not exceeding one thousand dollars (\$1,000),
10 or by both that imprisonment and fine.

11 (b) Every person who owns or possesses a firearm knowing that
12 the person is prohibited from doing so by a temporary restraining
13 order or injunction issued pursuant to Section 527.6, 527.8, or
14 527.85 of the Code of Civil Procedure, a protective order as defined
15 in Section 6218 of the Family Code, a protective order issued
16 pursuant to Section 136.2 or 646.91 of this code, or a protective
17 order issued pursuant to Section 15657.03 of the Welfare and
18 Institutions Code, is guilty of a public offense, which shall be
19 punishable by imprisonment in a county jail not exceeding one
20 year, by a fine not exceeding one thousand dollars (\$1,000), or by
21 both that imprisonment and fine.

22 (c) If probation is granted upon conviction of a violation of this
23 section, the court shall impose probation consistent with Section
24 1203.097.

25 (d) The Judicial Council shall provide notice on all protective
26 orders that the respondent is prohibited from owning, possessing,
27 purchasing, receiving, or attempting to purchase or receive a
28 firearm while the protective order is in effect. The order shall also
29 state that ~~the~~ *a firearm owned or possessed by the person* shall be
30 relinquished to the local law enforcement agency for that
31 jurisdiction ~~or, sold to a licensed gun firearms dealer, or transferred~~
32 *to a licensed firearms dealer pursuant to Section 29830 for the*
33 *duration of the period that the protective order is in effect,* and
34 that proof of surrender or sale shall be filed within a specified time
35 of receipt of the order. The order shall state the penalties for a
36 violation of the prohibition. The order shall also state on its face
37 the expiration date for relinquishment.

38 SEC. 3. Section 29830 is added to the Penal Code, to read:

39 29830. (a) Any person who is prohibited from owning or
40 possessing a firearm pursuant to this article, or who is prohibited

1 from owning or possessing a firearm pursuant to any other law,
2 may transfer or cause to be transferred, any firearm or firearms in
3 his or her possession, or of which he or she is the owner, to a
4 firearms dealer licensed pursuant to Section 26700 to 26915,
5 inclusive, for storage during the duration of the prohibition, if the
6 prohibition on owning or possessing the firearm will expire on a
7 date specified in the court order.

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

11 SEC. 4. Section 29850 of the Penal Code is amended to read:

12 29850. (a) A violation of Section 29800, 29805, 29815, or
13 29820 is justifiable where all of the following conditions are met:

14 (1) The person found the firearm or took the firearm from a
15 person who was committing a crime against the person who found
16 or took the firearm.

17 (2) The person possessed the firearm no longer than was
18 necessary to deliver or transport the firearm to a law enforcement
19 agency for that agency's disposition according to law *or to a*
20 *licensed firearms dealer for transfer or for storage pursuant to*
21 *Section 29830.*

22 (3) If the firearm was transported to a law enforcement agency
23 *or to a licensed firearms dealer*, it was transported in accordance
24 with subdivision (b) of Section 25570.

25 (4) If the firearm is being transported to a law enforcement
26 agency *or to a licensed firearms dealer*, the person transporting
27 the firearm has given prior notice to the law enforcement agency
28 *or to the licensed firearms dealer* that the person is transporting
29 the firearm to the law enforcement agency *or the licensed firearms*
30 *dealer* for disposition according to law.

31 (b) Upon the trial for violating Section 29800, 29805, 29815,
32 or 29820, the trier of fact shall determine whether the defendant
33 was acting within the provisions of the exemption created by this
34 section.

35 (c) The defendant has the burden of proving by a preponderance
36 of the evidence that the defendant comes within the provisions of
37 the exemption created by this section.

38 SEC. 5. Section 33870 of the Penal Code is amended to read:

39 33870. (a) If a law enforcement agency determines that the
40 applicant is the legal owner of any firearm deposited with the

1 agency, that the applicant is prohibited from possessing any
2 firearm, and that the firearm is an otherwise legal firearm, the
3 applicant shall be entitled to sell or transfer the firearm to a licensed
4 *firearms* dealer. *If a law enforcement agency determines that the*
5 *applicant is prohibited from owning or possessing any firearm*
6 *and the prohibition on owning or possessing the firearm will expire*
7 *on a date specified in the court order, the applicant shall be entitled*
8 *to have the firearm stored by a licensed firearm dealer for the*
9 *duration of the prohibition period pursuant to Section 29830.*

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

14 (c) ~~Nothing in this~~ *This section shall does not* prevent the local
15 law enforcement agency from charging the rightful owner of the
16 firearm the fees described in Section 33880.

17 SEC. 6. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.