

AMENDED IN SENATE MARCH 11, 2013

SENATE BILL

No. 108

Introduced by Senator Yee

January 14, 2013

An act to amend Sections 16520, 16540, 16750, 16850, and 23510; ~~27505, 27880, 27945, and 31810~~ of, to add ~~Sections~~ *Section* 17060 ~~and 27881~~ to, and to add Chapter 4 (commencing with Section 25235) to Division 4 of Title 4 of Part 6 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 108, as amended, Yee. Firearms: ~~lending and~~ residential storage.

Existing law regulates the possession of firearms, including storage requirements to prevent children from gaining access to firearms, and other safety devices including gun safes. Existing law also regulates the lending of firearms. Existing law defines the term "firearm" for these and other regulatory purposes, and excludes from that definition, "antique firearms" for various regulatory purposes.

This bill would provide that no person who is 18 years of age or older and who is the owner, lessee, renter, or other legal occupant of a residence, shall, while outside of that residence, keep in that residence a firearm that he or she owns or has lawful possession of unless the firearm is stored in one of certain specified ways, including in a gun safe or by using a firearm safety device. Violation of these provisions would be an offense punishable as an infraction, or for subsequent violations, as an infraction or misdemeanor, as specified. The bill would define the term "residence" for these purposes, would exclude antique firearms from these provisions, would provide that each firearm constitutes a distinct and separate offense under those provisions, and would make other conforming changes.

By creating a new crime, this bill would impose a state-mandated local program.

~~Existing law provides that no person, corporation, or firm shall sell, loan, or transfer a firearm to a minor, nor sell a handgun to an individual under 21 years of age, and excepts from that prohibition, specified loans of handguns to minors if certain criteria are met.~~

~~This bill would add to those criteria the requirement that the handgun be registered to the person loaning the handgun to the minor.~~

~~Existing law requires the loan of a firearm to be conducted through a licensed firearms dealer. Other existing law excepts from this requirement, certain loans of firearms between persons who are personally known to each other, if certain criteria are met.~~

~~This bill would add to those criteria the requirement that in the case of the loan of a handgun, the person lending the handgun is the registered owner of the handgun. The bill would create an additional exception to the dealer requirement for a loan of a firearm that occurs at the lender's residence or private property, as specified, if certain criteria are met.~~

~~Existing law, subject to exceptions, prohibits a person from loaning a handgun to a person who does not have a valid handgun safety certificate. Existing law excepts from that prohibition, certain loans to minors if certain criteria are met.~~

~~This bill would add to those criteria, the requirement that the handgun be registered to the person loaning the handgun to the minor.~~

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 no reimbursement is required by this act for a specified reason.

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 16520 of the Penal Code is amended to
- 2 read:
- 3 16520. (a) As used in this part, "firearm" means a device,
- 4 designed to be used as a weapon, from which is expelled through
- 5 a barrel, a projectile by the force of an explosion or other form of
- 6 combustion.

1 (b) As used in the following provisions, “firearm” includes the
2 frame or receiver of the weapon:

- 3 (1) Section 16550.
- 4 (2) Section 16730.
- 5 (3) Section 16960.
- 6 (4) Section 16990.
- 7 (5) Section 17070.
- 8 (6) Section 17310.
- 9 (7) Sections 26500 to 26588, inclusive.
- 10 (8) Sections 26600 to 27140, inclusive.
- 11 (9) Sections 27400 to 28000, inclusive.
- 12 (10) Section 28100.
- 13 (11) Sections 28400 to 28415, inclusive.
- 14 (12) Sections 29010 to 29150, inclusive.
- 15 (13) Sections 29610 to 29750, inclusive.
- 16 (14) Sections 29800 to 29905, inclusive.
- 17 (15) Sections 30150 to 30165, inclusive.
- 18 (16) Section 31615.
- 19 (17) Sections 31705 to 31830, inclusive.
- 20 (18) Sections 34355 to 34370, inclusive.
- 21 (19) Sections 8100, 8101, and 8103 of the Welfare and
22 Institutions Code.

23 (c) As used in the following provisions, “firearm” also includes
24 a rocket, rocket propelled projectile launcher, or similar device
25 containing an explosive or incendiary material, whether or not the
26 device is designed for emergency or distress signaling purposes:

- 27 (1) Section 16750.
- 28 (2) Subdivision (b) of Section 16840.
- 29 (3) Section 25400.
- 30 (4) Sections 25850 to 26025, inclusive.
- 31 (5) Subdivisions (a), (b), and (c) of Section 26030.
- 32 (6) Sections 26035 to 26055, inclusive.

33 (d) As used in the following provisions, “firearm” does not
34 include an unloaded antique firearm:

- 35 (1) Subdivisions (a) and (c) of Section 16730.
- 36 (2) Section 16550.
- 37 (3) Section 16960.
- 38 (4) Section 17310.
- 39 (5) Chapter 6 (commencing with Section 26350) of Division 5
40 of Title 4.

1 (6) Chapter 7 (commencing with Section 26400) of Division 5
2 of Title 4.

3 (7) Sections 26500 to 26588, inclusive.

4 (8) Sections 26700 to 26915, inclusive.

5 (9) Section 27510.

6 (10) Section 27530.

7 (11) Section 27540.

8 (12) Section 27545.

9 (13) Sections 27555 to 27570, inclusive.

10 (14) Sections 29010 to 29150, inclusive.

11 (15) Section 25235.

12 (e) As used in Sections 34005 and 34010, “firearm” does not
13 include a destructive device.

14 (f) As used in Sections 17280 and 24680, “firearm” has the
15 same meaning as in Section 922 of Title 18 of the United States
16 Code.

17 (g) As used in Sections 29010 to 29150, inclusive, “firearm”
18 includes the unfinished frame or receiver of a weapon that can be
19 readily converted to the functional condition of a finished frame
20 or receiver.

21 SEC. 2. Section 16540 of the Penal Code is amended to read:

22 16540. As used in Division 2 (commencing with Section 23620)
23 of Title 4 and in Section 25235, “firearm safety device” means a
24 device other than a gun safe that locks and is designed to prevent
25 children and unauthorized users from firing a firearm. The device
26 may be installed on a firearm, be incorporated into the design of
27 the firearm, or prevent access to the firearm.

28 SEC. 3. Section 16750 of the Penal Code is amended to read:

29 16750. (a) As used in Section 25400, “lawful possession of
30 the firearm” means that the person who has possession or custody
31 of the firearm either lawfully owns the firearm or has the
32 permission of the lawful owner or a person who otherwise has
33 apparent authority to possess or have custody of the firearm. A
34 person who takes a firearm without the permission of the lawful
35 owner or without the permission of a person who has lawful
36 custody of the firearm does not have lawful possession of the
37 firearm.

38 (b) As used in Chapter 4 (commencing with Section 25235) of
39 Division 4 of Title 4, Article 2 (commencing with Section 25850),
40 Article 3 (commencing with Section 25900), and Article 4

1 (commencing with Section 26000) of Chapter 3 of Division 5 of
2 Title 4, Chapter 6 (commencing with Section 26350) of Division
3 5 of Title 4, and Chapter 7 (commencing with Section 26400) of
4 Division 5 of Title 4, “lawful possession of the firearm” means
5 that the person who has possession or custody of the firearm either
6 lawfully acquired and lawfully owns the firearm or has the
7 permission of the lawful owner or person who otherwise has
8 apparent authority to possess or have custody of the firearm. A
9 person who takes a firearm without the permission of the lawful
10 owner or without the permission of a person who has lawful
11 custody of the firearm does not have lawful possession of the
12 firearm.

13 SEC. 4. Section 16850 of the Penal Code is amended to read:

14 16850. As used in Sections 17740, 23925, 25105, 25205,
15 25235, and 25610, in Article 3 (commencing with Section 25505)
16 of Chapter 2 of Division 5 of Title 4, in Chapter 6 (commencing
17 with Section 26350) of Division 5 of Title 4, and in Chapter 7
18 (commencing with Section 26400) of Division 5 of Title 4, “locked
19 container” means a secure container that is fully enclosed and
20 locked by a padlock, keylock, combination lock, or similar locking
21 device. The term “locked container” does not include the utility
22 or glove compartment of a motor vehicle.

23 SEC. 5. Section 17060 is added to the Penal Code, to read:

24 17060. As used in Section 25235, “residence” is any structure
25 intended or used for human habitation, including, but not limited
26 to, houses, condominiums, rooms, motels, hotels, time-shares, and
27 recreational and other vehicles where human habitation occurs.
28 *For purposes of Section 25235, “residence” extends to the property*
29 *lines of the property where the structure is located, except in the*
30 *case of recreational and other vehicles.*

31 SEC. 6. Section 23510 of the Penal Code is amended to read:

32 23510. (a) For purposes of Sections 25400 and 26500, Sections
33 27500 to 27590, inclusive, Section 28100, Sections 29610 to
34 29750, inclusive, Sections 29800 to 29905, inclusive, and Section
35 31615 of this code, and any provision listed in subdivision (a) of
36 Section 16585 of this code, and Sections 8100, 8101, and 8103 of
37 the Welfare and Institutions Code, notwithstanding the fact that
38 the term “any firearm” may be used in those sections, each firearm
39 or the frame or receiver of each firearm constitutes a distinct and
40 separate offense under those sections.

1 (b) For purposes of Section 25235, notwithstanding the fact that
2 the term “any firearm” may be used in those sections, each firearm
3 constitutes a distinct and separate offense under that section.

4 SEC. 7. Chapter 4 (commencing with Section 25235) is added
5 to Division 4 of Title 4 of Part 6 of the Penal Code, to read:

6
7 CHAPTER 4. STORAGE OF FIREARMS WITHIN RESIDENCES

8
9 25235. (a) A person who is 18 years of age or older and who
10 is the owner, lessee, renter, or other legal occupant of a residence,
11 shall not, while outside of that residence, store in that residence a
12 firearm that he or she owns or has lawful possession of unless the
13 firearm is stored in one of the following ways:

14 (1) The firearm is within a locked container.

15 (2) The firearm is disabled by a firearm safety device.

16 (3) The firearm is within a locked gun safe.

17 (4) The firearm is within a locked trunk.

18 (5) The firearm is locked with a locking device as described in
19 Section 16860, which has rendered the firearm inoperable.

20 (b) A violation of this section is punishable as follows:

21 (1) A first violation involving a firearm that is not a handgun,
22 as an infraction, punishable by a fine not exceeding one hundred
23 dollars (\$100).

24 (2) For a second violation involving any firearm or a first
25 violation involving a handgun, as an infraction, punishable by a
26 fine not exceeding one thousand dollars (\$1,000).

27 (3) For a third or subsequent violation, as a misdemeanor.

28 (c) The provisions of this section are cumulative, and shall not
29 be construed as restricting the application of any other law.
30 However, an act or omission punishable in different ways by
31 different provisions of law shall not be punished under more than
32 one provision.

33 ~~SEC. 8. Section 27505 of the Penal Code is amended to read:~~

34 ~~27505. (a) A person, corporation, or firm shall not sell, loan,~~
35 ~~or transfer a firearm to a minor, nor sell a handgun to an individual~~
36 ~~under 21 years of age.~~

37 ~~(b) Subdivision (a) does not apply to or affect the following~~
38 ~~circumstances:~~

39 ~~(1) The sale of a handgun, if the handgun is an antique firearm~~
40 ~~and the sale is to a person at least 18 years of age.~~

1 ~~(2) The transfer or loan of a firearm, other than a handgun, to~~
2 ~~a minor by the minor's parent or legal guardian.~~

3 ~~(3) The transfer or loan of a firearm, other than a handgun, to~~
4 ~~a minor by a grandparent who is not the legal guardian of the~~
5 ~~minor, if the transfer is done with the express permission of the~~
6 ~~minor's parent or legal guardian.~~

7 ~~(4) The loan of a firearm, other than a handgun, to a minor, with~~
8 ~~the express permission of the minor's parent or legal guardian, if~~
9 ~~the loan does not exceed 30 days in duration and is for a lawful~~
10 ~~purpose.~~

11 ~~(5) The loan of a handgun to a minor by the minor's parent or~~
12 ~~legal guardian, if all of the following requirements are satisfied:~~

13 ~~(A) The minor is being loaned the firearm for the purposes of~~
14 ~~engaging in a lawful, recreational sport, including, but not limited~~
15 ~~to, competitive shooting, or agricultural, ranching, or hunting~~
16 ~~activity, or a motion picture, television, or video production, or~~
17 ~~entertainment or theatrical event, the nature of which involves the~~
18 ~~use of a firearm.~~

19 ~~(B) The duration of the loan does not exceed the amount of time~~
20 ~~that is reasonably necessary to engage in the lawful, recreational~~
21 ~~sport, including, but not limited to, competitive shooting, or~~
22 ~~agricultural, ranching, or hunting activity, or a motion picture,~~
23 ~~television, or video production, or entertainment or theatrical event,~~
24 ~~the nature of which involves the use of a firearm.~~

25 ~~(C) The person loaning the handgun is the registered owner of~~
26 ~~the handgun pursuant to Section 11106.~~

27 ~~(6) The loan of a handgun to a minor by a person who is not the~~
28 ~~minor's parent or legal guardian, if all of the following~~
29 ~~requirements are satisfied:~~

30 ~~(A) The minor is accompanied by the minor's parent or legal~~
31 ~~guardian when the loan is made, or the minor has the written~~
32 ~~consent of the minor's parent or legal guardian, which is presented~~
33 ~~at the time of the loan, or earlier.~~

34 ~~(B) The minor is being loaned the firearm for the purpose of~~
35 ~~engaging in a lawful, recreational sport, including, but not limited~~
36 ~~to, competitive shooting, or agricultural, ranching, or hunting~~
37 ~~activity, or a motion picture, television, or video production, or~~
38 ~~entertainment or theatrical event, the nature of which involves the~~
39 ~~use of a firearm.~~

1 (C) The duration of the loan does not exceed the amount of time
2 that is reasonably necessary to engage in the lawful, recreational
3 sport, including, but not limited to, competitive shooting, or
4 agricultural, ranching, or hunting activity, or a motion picture,
5 television, or video production, or entertainment or theatrical event,
6 the nature of which involves the use of a firearm.

7 (D) The duration of the loan does not, in any event, exceed 10
8 days.

9 (E) The person loaning the handgun is the registered owner of
10 the handgun pursuant to Section 11106.

11 SEC. 9. Section 27880 of the Penal Code is amended to read:
12 27880. Section 27545 does not apply to the loan of a firearm
13 between persons who are personally known to each other, if all of
14 the following requirements are satisfied:

- 15 (a) The loan is infrequent, as defined in Section 16730.
- 16 (b) The loan is for any lawful purpose.
- 17 (c) The loan does not exceed 30 days in duration.
- 18 (d) If the firearm is a handgun, the individual being loaned the
19 handgun shall have a valid handgun safety certificate.
- 20 (e) If the firearm being loaned is a handgun, the person loaning
21 the handgun is the registered owner of the handgun, pursuant to
22 Section 11106.

23 SEC. 10. Section 27881 is added to the Penal Code, to read:
24 27881. Section 27545 does not apply to the loan of a firearm
25 provided all of the following are met:

- 26 (a) If the firearm being loaned is a handgun, the handgun is
27 registered to the person making the loan pursuant to Section 11106.
- 28 (b) The loan occurs within the lender's place of residence or
29 private property, except for property that is zoned for commercial,
30 retail, or industrial activity.
- 31 (c) The individual receiving the firearm is not prohibited by
32 state or federal law from possessing, receiving, owning, or
33 purchasing a firearm.
- 34 (d) If the firearm being loaned is a handgun, the individual
35 receiving the handgun is not under 21 years of age.
- 36 (e) If the firearm being loaned is a handgun, the individual
37 receiving the handgun has a valid handgun safety certificate.
- 38 (f) If the firearm being loaned is not a handgun, the individual
39 receiving the firearm is not under 18 years of age.

40 SEC. 11. Section 27945 of the Penal Code is amended to read:

1 ~~27945. Section 27545 does not apply to or affect the following~~
2 ~~circumstances:~~

3 ~~(a) The transfer or loan of a firearm, other than a handgun, to a~~
4 ~~minor by the minor's parent or legal guardian.~~

5 ~~(b) The transfer or loan of a firearm, other than a handgun, to~~
6 ~~a minor by a grandparent who is not the legal guardian of the~~
7 ~~minor, if the transfer is done with the express permission of the~~
8 ~~minor's parent or legal guardian.~~

9 ~~(c) The loan of a firearm, other than a handgun, to a minor, with~~
10 ~~the express permission of the minor's parent or legal guardian, if~~
11 ~~the loan does not exceed 30 days in duration and is for a lawful~~
12 ~~purpose.~~

13 ~~(d) The loan of a handgun to a minor by the minor's parent or~~
14 ~~legal guardian, if all of the following requirements are satisfied:~~

15 ~~(1) The minor is being loaned the firearm for the purposes of~~
16 ~~engaging in a lawful, recreational sport, including, but not limited~~
17 ~~to, competitive shooting, or agricultural, ranching, or hunting~~
18 ~~activity, or a motion picture, television, or video production, or~~
19 ~~entertainment or theatrical event, the nature of which involves the~~
20 ~~use of a firearm.~~

21 ~~(2) The duration of the loan does not exceed the amount of time~~
22 ~~that is reasonably necessary to engage in the lawful, recreational~~
23 ~~sport, including, but not limited to, competitive shooting, or~~
24 ~~agricultural, ranching, or hunting activity, or a motion picture,~~
25 ~~television, or video production, or entertainment or theatrical event,~~
26 ~~the nature of which involves the use of a firearm.~~

27 ~~(3) The person loaning the handgun is the registered owner of~~
28 ~~the handgun pursuant to Section 11106.~~

29 ~~(e) The loan of a handgun to a minor by a person who is not the~~
30 ~~minor's parent or legal guardian, if all of the following~~
31 ~~requirements are satisfied:~~

32 ~~(1) The minor is accompanied by the minor's parent or legal~~
33 ~~guardian when the loan is made, or the minor has the written~~
34 ~~consent of the minor's parent or legal guardian, which is presented~~
35 ~~at the time of the loan, or earlier.~~

36 ~~(2) The minor is being loaned the firearm for the purpose of~~
37 ~~engaging in a lawful, recreational sport, including, but not limited~~
38 ~~to, competitive shooting, or agricultural, ranching, or hunting~~
39 ~~activity, or a motion picture, television, or video production, or~~

1 entertainment or theatrical event, the nature of which involves the
2 use of a firearm.

3 ~~(3) The duration of the loan does not exceed the amount of time~~
4 ~~that is reasonably necessary to engage in the lawful, recreational~~
5 ~~sport, including, but not limited to, competitive shooting, or~~
6 ~~agricultural, ranching, or hunting activity, or a motion picture,~~
7 ~~television, or video production, or entertainment or theatrical event,~~
8 ~~the nature of which involves the use of a firearm.~~

9 ~~(4) The duration of the loan does not, in any event, exceed 10~~
10 ~~days.~~

11 ~~(5) The person loaning the handgun is the registered owner of~~
12 ~~the handgun pursuant to Section 11106.~~

13 SEC. 12. Section 31810 of the Penal Code is amended to read:
14 31810. Subdivision (a) of Section 31615 does not apply to or
15 affect the following circumstances:

16 (a) ~~The loan of a handgun to a minor by the minor’s parent or~~
17 ~~legal guardian, if all of the following requirements are satisfied:~~

18 ~~(1) The minor is being loaned the firearm for the purposes of~~
19 ~~engaging in a lawful, recreational sport, including, but not limited~~
20 ~~to, competitive shooting, or agricultural, ranching, or hunting~~
21 ~~activity, or a motion picture, television, or video production, or~~
22 ~~entertainment or theatrical event, the nature of which involves the~~
23 ~~use of a firearm.~~

24 ~~(2) The duration of the loan does not exceed the amount of time~~
25 ~~that is reasonably necessary to engage in the lawful, recreational~~
26 ~~sport, including, but not limited to, competitive shooting, or~~
27 ~~agricultural, ranching, or hunting activity, or a motion picture,~~
28 ~~television, or video production, or entertainment or theatrical event,~~
29 ~~the nature of which involves the use of a firearm.~~

30 ~~(3) The person loaning the handgun is the registered owner of~~
31 ~~the handgun pursuant to Section 11106.~~

32 (b) ~~The loan of a handgun to a minor by a person who is not the~~
33 ~~minor’s parent or legal guardian, if all of the following~~
34 ~~requirements are satisfied:~~

35 ~~(1) The minor is accompanied by the minor’s parent or legal~~
36 ~~guardian when the loan is made, or the minor has the written~~
37 ~~consent of the minor’s parent or legal guardian, which is presented~~
38 ~~at the time of the loan, or earlier.~~

39 ~~(2) The minor is being loaned the firearm for the purpose of~~
40 ~~engaging in a lawful, recreational sport, including, but not limited~~

1 to, competitive shooting, or agricultural, ranching, or hunting
2 activity, or a motion picture, television, or video production, or
3 entertainment or theatrical event, the nature of which involves the
4 use of a firearm.

5 (3) The duration of the loan does not exceed the amount of time
6 that is reasonably necessary to engage in the lawful, recreational
7 sport, including, but not limited to, competitive shooting, or
8 agricultural, ranching, or hunting activity, or a motion picture,
9 television, or video production, or entertainment or theatrical event,
10 the nature of which involves the use of a firearm.

11 (4) The duration of the loan does not, in any event, exceed 10
12 days.

13 (5) The person loaning the handgun is the registered owner of
14 the handgun pursuant to Section 11106.

15 ~~SEC. 13.~~

16 *SEC. 8.* No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.