
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1192 **Hearing Date:** May 15, 2018
Author: Lackey
Version: May 7, 2018
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Firearms: Retired Peace Officers*

HISTORY

Source: California Reserve Peace Officers Association

Prior Legislation: AB 703 (Hall), Chapter 267, Statutes of 2013

Support: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotic Officers Association; California Peace Officers Association; Los Angeles County Probation California Peace Officers Union AFSCME Local 685; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Peace Officers Research Association of California; Riverside Sheriffs' Association; one private individual

Opposition: None known

Assembly Floor Vote: 70 - 1

PURPOSE

The purpose of this bill is to exempt retired Level I reserve peace officers who meet specified length of service requirements from the ban on possessing high-capacity magazines.

Existing law mandates that a person who, prior to July 1, 2017, legally possessed a large-capacity magazine shall dispose of that magazine by any of the following means: (Pen. Code, § 32310, subd. (c).)

- Remove the large-capacity magazine from the state.
- Sell the large-capacity magazine to a licensed firearms dealer.
- Destroy the large-capacity magazine.
- Surrender the large-capacity magazine to a law enforcement agency for destruction.

Existing law exempts "honorably retired sworn peace officers" from the mandate to dispose of high capacity magazines. (Pen. Code, § 32406.)

Existing law defines "honorably retired" includes any peace officer who has qualified for, and has accepted, a service or disability retirement. As used in those provisions, "honorably retired" does not include an officer who has agreed to a service retirement in lieu of termination. (Pen. Code, § 11690.)

Existing law defines a "Level I reserve peace officer" as a reserve officer deputized or appointed pursuant to specified sections and assigned to the prevention and detection of crime and the general enforcement of the laws of California, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. (Penal Code, § 832.6, subd. (a)(1).)

Existing law states that the authority of a reserve peace officer extends only for the duration of the person's specific assignment. (Penal Code, § 830.6, subd. (a).)

Existing law provide that a retired Level I reserve peace officer is entitled to an endorsement for a concealed weapons (CCW) permit if he or she carried a firearm during the course and scope of his or her appointment and he or she served in the aggregate the minimum amount of time specified by the retiree's agency's policy. This policy may not set an aggregate term requirement that is less than 10 years or more than 20 years. (Pen. Code, § 26300.)

This bill exempts retired Level I reserve peace officers who meet specified length of service requirements from the ban on possessing high-capacity magazines.

COMMENTS

1. Need for This Bill

According to the author:

In 2013, the California Legislature passed and the Governor signed into law Assembly Bill 703 to enable honorably separated Level 1 reserve peace officers to carry a concealed firearm by requiring agencies to issue CCW-endorsed ID cards to them upon separation on the same basis as honorably retired full-time peace officers. The law became effective on January 1, 2014.

At the time the law became effective, the California Penal Code allowed the acquisition and possession of high-capacity magazines by currently sworn full-time and reserve peace officers. It also allowed the continued possession of high-capacity magazines by California residents who lawfully acquired them prior to the year 2000 and by retired peace officers who acquired them during the course of their active duty.

In 2016, a bill was signed and an initiative was passed both requiring all persons, with few exceptions, to divest themselves of high-capacity magazines by July 1, 2017. Both the bill and the initiative were amended before they were passed pursuant to which an exemption was added for "honorably retired peace officers" to continue to

possess high capacity magazines notwithstanding the foregoing prohibitions. The term “honorably retired peace officers” is defined in California Penal Code section 16690 and requires that the retired officer receive a pension.

Due to a technical oversight, the amendments to the bill and initiative referred to above did not consider that most honorably separated Level 1 reserve peace officers do not receive a pension and thus they will not meet the definition of “honorably retired” peace officers when the bill and the initiative become effective July 1, 2017. They would therefore be forced to dispose of any high-capacity magazines possessed by them on or prior to July 1, 2017, despite the fact that they possess CCW-endorsed ID cards issued to them upon honorable separation from their agencies. Absent language amending section 16690 to include honorably separated Level 1 prior to July 1, 2017, there would be no provision for those affected officers to reacquire high-capacity magazines for the firearms they have been authorized by law to carry as honorably separated Level 1 reserve peace officers.

2. Proposition 63 Banned Possession of Large-Capacity Magazines by Retired Reserve Peace Officers

On November 8, 2016, California voters approved Proposition 63 by more than a 63% majority. The proposition was titled "Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative."

Proposition 63 required individuals who wish to purchase ammunition to first obtain a permit. The measure mandated dealers to check this permit before selling ammunition. The measure also eliminated several exemptions to the large-capacity magazines ban and increased the penalty for possessing them. Proposition 63 enacted a court process that attempts to ensure prohibited individuals do not continue to have firearms. Proposition 47 of 2014 made stealing an item that is valued at less than \$950 a misdemeanor. Therefore, stealing a gun valued at less than \$950 is a misdemeanor. Proposition 63 made stealing a gun, including one valued at less than \$950, a felony punishable by up to three years in prison.

California banned large-capacity magazines for most individuals in 2000. Individuals who had large-capacity magazines before 2000 were allowed to keep the magazines. Proposition 63 removed the ownership exemption for pre-2000 owners of large-capacity magazines. The measure provided for charging individuals who do not comply with it with an infraction.

Specifically, Proposition 63 stated that all persons who lawfully possessed a high capacity magazine prior to January 1, 2017 had to dispose of the magazine by one of four specified options. However, the proposition exempted "honorably retired sworn peace officers" from the mandate to dispose of high capacity magazines. The definition of "honorably retired" was taken from Pen. Code, § 11690 which requires that an honorably retired peace officer take a pension. However, honorably retired reserve peace officers are not generally offered a pension.

On June 29, 2017 U.S. Circuit Court Judge Roger T. Benitez of the Southern District of California blocked the high-capacity magazine ban from going into effect in California¹ by granting a preliminary injunction. The merits of the underlying case must still be heard and

¹ http://www.courthousenews.com/wp-content/uploads/2017/06/Calif.Guns_.pdf

determined by the District Court, and will most certainly make its way through the appellate process.

3. This Bill Would Permit Level I Retired Reserve Peace Officers to Possess Large Capacity Magazines

Under current law, we permit Level I retired reserve peace officers to carry concealed weapons if they meet specified time of service requirements. A "Level I reserve peace officer" is a reserve officer deputized or appointed and assigned to the prevention and detection of crime and the general enforcement of the laws of California, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. AB 703 (Hall), Chapter 267, Statutes of 2013, provided that a retired Level I reserve peace officer is entitled to an endorsement for a concealed weapons (CCW) permit if he/she carried a firearm during the course and scope of his/her appointment and he/she served in the aggregate the minimum amount of time specified by the retiree's agency's policy. Under current law a retired Level I reserve peace officer is entitled to an endorsement for a concealed weapons (CCW) permit if he or she carried a firearm during the course and scope of his or her appointment and he or she served in the aggregate the minimum amount of time specified by the retiree's agency's policy. This policy may not set an aggregate term requirement that is less than 10 years or more than 20 years. Under this bill, similarly situated retired reserve peace officers would be permitted to additionally possess large capacity magazines.

4. Argument in Support

According to the California Peace Officers Association:

The passage of Proposition 63 last November altered certain provisions for retired officers' ability to carry firearms and ammunition. By expanding the category of honorably retired officers to include those who have given a specified amount of service, training, and acceptance to their issuing agency. Wisely, Mr. Lackey's bill also keeps in place provisions to keep 'honorably retired' to preclude an officer who has accepted service retirement in place of termination.

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