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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 736                      **Hearing Date:** July 11, 2017  
**Author:** Gipson  
**Version:** March 27, 2017  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Firearms: Dealer Licensing*

## HISTORY

**Source:** Law Center to Prevent Gun Violence

**Prior Legislation:** AB 2459 (McCarty), 2016, failed Assembly Privacy Committee

**Support:** California Chapters of the Brady Campaign to Prevent Gun Violence

**Opposition:** Firearms Policy Coalition; Gun Owners of California; National Shooting Sports Foundation

**Assembly Floor Vote:** 49 - 29

## PURPOSE

*The purpose of this bill is to impose graduated civil fines on firearms dealers for violations of specified firearms business regulations.*

*Existing law* specifies grounds for forfeiture of a license to sell firearms. Provides for forfeiture of a license for violations of the following provisions related to the sale of firearms: (Pen. Code, § 26800.)

- Rules related to the location of a licensee's business, types of firearms, and acceptance of delivery;
- Regulations related to the display of the license;
- Requirements for the delivery of a firearm by a dealer;
- Rules related to the display of handguns, imitations handguns, and where advertisements are prohibited;
- Rules related to the prompt processing of firearms transactions;
- Regulations regarding the required posting of warnings;
- Rules related to the delivery of firearms and the valid firearm safety certificates;
- Regulations about proof of California residence;
- Requirement that recipients are required to perform safe handling;
- Requirement to offer a firearm pamphlet;
- Prohibition of collusion by a licensee;
- Rule regarding the posting of charges and fees;
- Prohibition against misstatement of government fees; and

- Rules about inventory and reports of loss or theft.

*This bill* provides that in addition to, or in lieu of, the removal of a firearms dealer from the list of licensed persons or the forfeiture of a firearms dealer license, the California Department of Justice (DOJ), or the licensing authority in a jurisdiction that has adopted an inspection program, may impose a civil fine on a dealer under the following circumstances:

- When the dealer has received notification from the department or local authority regarding a violation of specified firearms dealer regulations and has failed to take corrective action as required within the time specified in the notice; and
- The dealer has knowingly or with gross negligence violated a specified firearms dealer regulation.

*This bill* specifies the amount of the civil fine authorized shall be as follows:

- For a first violation, a civil fine of five hundred dollars (\$500);
- For a second violation that occurs within five years of a previous violation for which a fine was imposed pursuant to this section, a civil fine of one thousand dollars (\$1,000); and
- For a third or subsequent violation that occurs within five years of a previous violation for which a fine was imposed pursuant to this section, a civil fine of five thousand dollars (\$5,000).

*Existing law* provides that DOJ may inspect dealers to ensure compliance with specified firearms provisions. (Pen. Code, § 26720, subd. (a).)

*Existing law* specifies that DOJ may assess an annual fee, not to exceed one hundred fifteen dollars (\$115), to cover the reasonable cost of maintaining the list of persons licensed to sell firearms at retail, including the cost of inspections. (Pen. Code, § 26720, subd. (b).)

*Existing law* states that dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program. (Pen. Code, § 26720, subd. (c).)

*Existing law* states that, in general and subject to exceptions, the business of a firearms licensee shall be conducted only in the buildings designated by the business license: (Pen. Code § 26805, subd. (a).)

*Existing law* provides an exception that a person licensed, as specified, may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at any gun show or event if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business shall be entitled to conduct business as authorized at any gun show or event in the state, without regard to the jurisdiction within this state that issued the license provided the person complies with all applicable laws, including, but not limited to, the waiting period specified, and all applicable local laws, regulations, and fees, if any; (Pen. Code § 26805, subd. (b)(1).)

*Existing law* provides an exception for a person licensed as specified may engage in the sale and transfer of firearms other than handguns, at specified events, subject to the prohibitions and restrictions contained in those sections; (Pen. Code § 26805, subd. (c)(1).)

*Existing law* provides an exception for a person licensed, as specified, who may also accept delivery of firearms other than handguns, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified; (Pen. Code § 26805, subd. (c)(2).)

*Existing law* provides that a firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places: (Pen. Code § 26805, subd. (d).)

- The building designated in the license;
- The places specified as express exemptions; and
- The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

*Existing law* provides a person conducting specified firearms business shall publicly display the person's license issued, or a facsimile thereof, at any gun show or event, as specified in this subdivision. (Pen. Code § 26805, subd. (b)(2).)

*This bill* provides that the Attorney General, a district attorney, or a city attorney may bring an action to impose a civil fine or other action against a firearms retailer.

## COMMENTS

### 1. Need for This Bill

According to the author:

The number of gun dealers in the state has significantly grown in recent years and they are subject to infrequent inspections and oversight. Federal law enforcement inspects gun dealers once per year on average. Because of their access to a huge quantity of weapons, corrupt and negligent gun dealers are a significant source of guns sold on the illegal market. The Department of Justice should have the ability to fine and reprimand gun dealers that are out of compliance with the law without either taking no action, or revoking their license and drive them out of business.

### 2. Imposition of Fines in Lieu of Forfeiture of Dealer License

This bill proposes new fines related to violations of rules imposed upon licensees. The fines suggested are up to a \$500 civil fine for simple violations, and up to \$5,000 fines for violations when the licensee previously received written notification from DOJ regarding the breach and failed to take corrective action, or DOJ determines that the licensee committed the breach knowingly or with gross negligence. The grounds for forfeiture include a wide range of conduct, including the following: properly displayed license, proper delivery of a firearm, properly displaying firearms, prompt processing of firearms transactions, posting of warning signs, safety certificate compliance, checking proof of California residence, safe handling demonstrations, offering a firearms pamphlet, and many more.

### 3. Intermediate Penalties

Under current law DOJ or equivalent agency may only permanently revoke a dealer's license for a violation of regulations placed on firearms dealers for things as simple as posting needed warnings, or as serious as not properly checking for safety certificate compliance. This bill would allow for intermediate sanctions in the form of graduate fines as penalties. These intermediate sanctions would allow for less severe penalties than a permanent revocation of the dealer's license.

### 4. Limited Resources to Oversee Gun Sales

Law enforcement has limited resources to oversee the more than 2,300 licensee in our state. A 2010 *Washington Post* report found that, due to limited staffing, the federal Bureau of Alcohol, Tobacco and Firearms (ATF) could only inspect gun dealers once per decade on average. A recent *New York Times* investigative report, "How They Got Their Guns," found that, since 2009, 15 mass shootings were committed with *legally* purchased firearms. A study by ATF found that 60% of legally purchased weapons found at crime scenes came from 1% of gun dealers. Later studies have estimated that 90% of legally purchased guns used in the commission of a crime were from 5% of gun dealers. In 2014, 2,935 Californians were killed by firearms.

### 5. Argument in Support

According to the California Chapters of the Brady Campaign to Prevent Gun Violence:

AB 736 seeks to provide needed enforcement tools for addressing licensed firearm dealer violations. Under existing law, gun dealers must meet certain requirements regarding the display, sale or storage of firearm, the display of their license and the posting of specified notices and warnings. Currently, the only recourse for violating these requirements is the permanent revocation of a dealer's license through a lengthy procedure. This all-or-nothing approach is unworkable as license revocation is an extreme measure that is seldom used for lesser violations, but a dealer with significant violations can continue to engage in firearm transactions during the protracted revocation process.

AB 736 will address this problem by providing intermediate and escalating enforcement actions against licensed firearm dealers. Specifically, the bill would enable the Department of Justice, a district attorney, or a city attorney to impose a civil fine of \$500 for the first violation, a \$1,000 civil fine and a 30-day suspension of license for a second violation within five years, and a \$5,000 civil fine and permanent revocation of license for a third or subsequent violation within five years.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has been grossly underfunded for years and the problem will likely become worse under the Trump administration and current Congress. A *Washington Post* investigation in 2010 found that, as a result of inadequate staffing, ATF was able to inspect less than 10% of FFL's in 2009 and, on average, dealers are inspected only once a decade.<sup>i</sup> In light of this deficiency, California needs more enforcement tools that can be applied in a timely matter. An incremental approach, such as the civil fine

and penalty structure outlined in AB 736, provides opportunities for correction, as well as appropriate levels of accountability and consequence.

The California Brady Chapters support our state's strong gun laws, including the regulations imposed on licensed firearm dealers. We believe these laws have contributed to the steep decline in California's firearm death rate since 1993. To the extent that better compliance is fostered through incremental, appropriate and certain legal consequences, even more lives may be saved. The California Brady Chapters are pleased to support AB 736 and respectfully ask for your AYE vote.

## 6. Argument in Opposition

According to the National Shooting Sports Foundation:

Generally, such violations are inadvertent record keeping or operating errors by a retailer or retailer's employee, and there is no intent to commit a violation.

Most California firearms dealers are small businesses that could not withstand the imposition of civil fines for violations, no matter how minor, as proposed in AB 736.

There is legitimate concern that governmental entities seeking revenue could use the provisions of AB 736 to augment their funding. One only needs to review the past abuses of the asset forfeiture laws to understand why allowing the unconstrained imposition of civil fines for violations of licensing provisions, even if very minor, is a matter of substantial concern.

The primary effect of AB 736 would be to harm lawful firearms retailers by decreasing their net revenue, thus making fewer funds available for business operations.

As a result, their businesses would suffer, many could not continue to support the same number of employees, applicable sales and income tax revenue to the state and local governments would be less, and California's reputation of being anti-business would continue to grow.

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<sup>i</sup> Sari Horwitz and James V. Grimaldi, *ATF's Oversight Limited in Face of Gun Lobby*, Wash. Post, Oct. 26, 2010, at <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505823.html?sub=AR>.