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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 299                      **Hearing Date:** April 4, 2017  
**Author:** Mendoza  
**Version:** March 27, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *Firearms*

## HISTORY

Source: Author

Prior Legislation: SB 1332 (Mendoza)—Vetoed, 2016

Support: Unknown

Opposition: None known

## PURPOSE

*The purpose of this bill is to modify the firearm loan provisions, as specified.*

*Existing federal law* requires licensed firearms dealers, before they may deliver a firearm to a purchaser, to perform a background check on the purchaser through the federal National Instant Criminal Background Check System (“NICS”). (18 U.S.C §§ 921, et seq.)

*Existing law* defines a residence, for purpose of Penal Code Section 25135<sup>1</sup>, as “any structure intended or used for human habitation, including, but not limited to, houses, condominiums, rooms, motels, hotels, time-shares, and recreational or other vehicles where human habitation occurs.” (Penal Code § 17060.)

*Existing law* requires that, except as specified, all sales, loans, and transfers of firearms be processed through or by a state-licensed firearms dealer or a local law enforcement agency. (Penal Code § 27545.)

*Existing law* provides that there is a 10-day waiting period when purchasing a firearm through a firearms dealer. During which time, a background check is conducted and, if the firearm is a handgun, a handgun safety certificate is required prior to delivery of the firearm. (Penal Code §§ 26815, 26840(b) and 27540.)

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<sup>1</sup> Penal Code § 25135 states that “A person who is 18 years of age or older, and who is the owner, lessee, renter, or other legal occupant of a residence, who owns a firearm and who knows or has reason to know that another person also residing therein is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm shall not keep in that residence any firearm that he or she owns unless one of the exceptions apply.”

*Existing law* prohibits a person from selling, leasing, or transferring a firearm without a license, as specified. (Penal Code § 26500.)

*Existing law* states that the firearms dealer licensing requirements do not apply to any sale, delivery, or transfer of firearms made to an authorized law enforcement representative of any city, county, city and county, or state, or of the federal government, for exclusive use by that governmental agency if, prior to the sale, delivery, or transfer of the firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that person is employed. (Penal Code § 26600.)

*Existing law* states that specified firearms licensing requirements do not apply to any sale, delivery, or transfer of firearms made to an authorized law enforcement representative of any city, county, city and county, or state, or of the federal government, for exclusive use by that governmental agency if, prior to the sale, delivery, or transfer of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that person is employed. (Penal Code § 27050.)

*Existing law* states that the through dealer transfer requirement does not apply to any sale, delivery, or transfer of firearms made to, or the importation of firearms by, an authorized law enforcement representative of any city, county, city and county, or state, or of the federal government, for exclusive use by that governmental agency if, prior to the sale, delivery, transfer, or importation of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made or from whom the firearm is being imported, as specified. (Penal Code § 27600.)

*Existing law* creates numerous exceptions to a variety of different and specified firearms transfer requirements, including penal code section 27545, for loans of firearms under a variety of different circumstances. The general categories of these exceptions are:

- For target shooting at target facility. (Penal Code § 26545.)
- To entertainment production. (Penal Code § 26580.)
- Several exceptions relating to law enforcement officers and government agencies (Penal Code §§ 26600, et seq.)
- For infrequent loan of non-handgun; curio or relic (Penal Code § 27966) [commencing January 1, 2014]
- To a consultant-evaluator. (Penal Code § 27005.)
- To minors. (Penal Code § 27505.)
- Loans to persons known to each other. (Penal Code § 27880.)
- Where the firearm stays within the presence of the owner. (Penal Code § 27885.)
- To a licensed hunter. (Penal Code § 27950.)

*Exiting law* provides that specified transfer provisions do not apply to the transfer of a firearm by gift, bequest, intestate succession, or other means from one individual to another, if all of the following requirements are met:

- The transfer is infrequent, as specified.
- The transfer is between members of the same immediate family.
- Within 30 days of taking possession of the firearm, the person to whom it is transferred shall submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this subdivision shall be made available to them in a format prescribed by the department.
- Until January 1, 2015, the person taking title to the firearm shall first obtain a valid handgun safety certificate if the firearm is a handgun, and commencing January 1, 2015, a valid firearm safety certificate for any firearm, except that in the case of a handgun, a valid unexpired handgun safety certificate may be used.
- The person receiving the firearm is 18 years of age or older.

(Penal Code § 27875 (a).)

*Exiting law* provides that specified transfer provisions do not apply to a person who imports a firearm into this state, brings a firearm into this state, or transports a firearm into this state if all of the following requirements are met:

- The person acquires ownership of the firearm from an immediate family member by bequest or intestate succession.
- The person has obtained a valid firearm safety certificate, except that in the case of a handgun, a valid unexpired handgun safety certificate may be used.
- The receipt of any firearm by the individual by bequest or intestate succession is infrequent, as specified.
- The person acquiring ownership of the firearm by bequest or intestate succession is 18 years of age or older.
- Within 30 days of that person taking possession of the firearm and importing, bringing, or transporting it into this state, the person shall submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this subdivision shall be made available to them in a format prescribed by the department.

(Penal Code § 27875 (b).)

*Existing law* allows for the loan of a firearm between persons, if the following requirements are met:

- The loan is to a spouse, registered domestic partner, or any of the following relations, whether by consanguinity, adoption, or steprelation:

- Parent.
  - Child.
  - Sibling.
  - Grandparent.
  - Grandchild.
- The loan is infrequent, as specified.
  - The loan is for any lawful purpose.
  - The loan does not exceed 30 days in duration.
  - Until January 1, 2015, if the firearm is a handgun, the individual being loaned the firearm shall have a valid handgun safety certificate. Commencing January 1, 2015, for any firearm, the individual being loaned the firearm shall have a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.
  - If the firearm being loaned is a handgun, the handgun is registered to the person making the loan, as specified.

(Penal Code § 27880.)

*Existing law* states that a person cannot do either of the following:

- Purchase or receive any firearm, except an antique firearm, without a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.
- Sell, deliver, loan, or transfer any firearm, except an antique firearm, to any person who does not have a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.

(Penal Code § 31615.)

*Existing law* exempts from the firearm safety certificate requirement any sale, delivery, or transfer of firearms made to an authorized law enforcement representative of any city, county, city and county, or state, or of the federal government, for exclusive use by that governmental agency if, prior to the sale, delivery, or transfer of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that person is employed. (Penal Code § 31705.)

*This bill* states that firearms transfer requirements, under Penal Code Section 27545, do not apply to the loan of a firearm if the following conditions are met:

- If the firearm being loaned is a handgun, the handgun is registered to the person making the loan.

- The firearm being loaned is stored in the receiver's place of residence or in an enclosed structure on the receiver's private property, that is not zoned for commercial, retail, or industrial activity.
- The firearm at all times stays within the receiver's place of residence or in an enclosed structure on the receiver's private property, that is not zoned for commercial, retail, or industrial activity.
- The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.
- The individual receiving the firearm is 18 years of age or older.
- The individual receiving the firearm has a valid firearm safety certificate, except that if the firearm being loaned is a handgun, the individual may instead have an unexpired handgun safety certificate.
- One of the following applies:
  - The firearm is maintained within a locked container.
  - The firearm is disabled by a firearm safety device.
  - The firearm is maintained within a locked gun safe.
  - The firearm is locked with a locking device that renders the firearm inoperable.
- The loan does not exceed 60 days in duration.
- The loan is made without consideration.
- There is a form prescribed by the Department of Justice and available in editable form on the department's Internet Web site that explains the obligations imposed by this section that is signed by both the party loaning the firearm for storage and the person receiving the firearm.
- Both parties to the loan possess signed copies of the form required.

*This bill* defines "residence," for purposes of the new loan provision, as "any structure intended or used for human habitation, including, but not limited to, houses, condominiums, rooms, motels, hotels, and time-shares, but does not include recreational or other vehicles where human habitation occurs."

*This bill* exempts law enforcement personnel from licensing requirements for the loan of a firearm made to an authorized law enforcement representative of any city, county, city and county, or state, or of the federal government, for exclusive use by that governmental agency if, prior to the loan of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made, as specified.

*This bill* exempts from the through dealer transfer requirement the loan of firearms made to, or the importation of firearms by, an authorized law enforcement representative of any city, county, city and county, or state, or of the federal government, for exclusive use by that governmental agency if, prior to the loan of the firearm, written authorization from the head of the agency authorizing the transaction is presented to the person from whom loan is being made or from whom the firearm is being imported, as specified.

*This bill* deletes the reference to “immediate family” in the penal code sections relating to the transfer of firearms acquired by gift, bequest, intestate succession, or other means from one individual to another. And, instead states that the exemptions apply to any of the following relations, related by consanguinity, adoption, or steprelation:

- Parent
- Child
- Sibling
- Grandparent
- Grandchild

*This bill* makes a variety of conforming and technical changes.

## COMMENTS

### 1. Need for This Bill

According to the author:

An unfortunate string of tragic events involving the use of firearms resulting in death or serious injury continues to plague our nation and our state. Too many preventable incidents occur in which injury is caused by irresponsible firearm use. In 2014, there were a total of 33,599 firearm deaths in the United States, 10,945 of which were homicides, according to the Centers for Disease Control (CDC). In California specifically, there were 2,942 firearm deaths and 1,813 homicides. In 2015, there were approximately 278 unintentional shootings by children aged 17 and under in the United States, resulting in 88 deaths.

This trend can be reversed by continuing to strengthen California’s laws regarding firearms. According to the Bureau of Justice Statistics (BJS), about 1.4 million firearms were stolen during household burglaries and other property crimes between 2005 and 2010. A 2010 audit conducted by the San Jose Police Department reported that around 300 of its firearms could not be accounted for, some of which may have been stolen from officers’ homes. Graham Barlowe, Agent of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, Sacramento Office, stated that “In this day and age of technology, most of the electronics don’t really have any value at all... the firearms do. Even an old firearm is still valuable” (NBC Bay Area, 2015). Although reports vary, stolen guns may account for roughly 15% of guns used in crimes, thus it is essential that a safekeeping program is available to store a firearm properly when a gun owner leaves their property. . .

### 2. Effect of Legislation

This legislation is similar to Senate Bill 1332 (2016), which was vetoed by the Governor. The Governor stated in his veto message:

This bill provides for the joint registration of firearms between spouses and domestic partners and modifies existing firearm loan provisions.

This bill creates millions of dollars in new and ongoing costs for the Department of Justice. The Department is already tasked with enforcing the many existing requirements of California firearms law. I do not believe that this additional burden and cost comes with a commensurate public safety benefit.

Given the Governor's veto message, this legislation does not include joint spousal registration. This legislation, instead, provides that a firearm can be loaned if a variety of conditions are met, including:

- If the firearm being loaned is a handgun, the handgun is registered to the person making the loan.
- The firearm being loaned is stored in the receiver's place of residence or in an enclosed structure on the receiver's private property, that is not zoned for commercial, retail, or industrial activity.
- The firearm at all times stays within the receiver's place of residence or in an enclosed structure on the receiver's private property, that is not zoned for commercial, retail, or industrial activity.
- The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.
- The individual receiving the firearm is 18 years of age or older.
- The individual receiving the firearm has a valid firearm safety certificate, except that if the firearm being loaned is a handgun, the individual may instead have an unexpired handgun safety certificate.
- One of the following applies:
  - The firearm is maintained within a locked container.
  - The firearm is disabled by a firearm safety device.
  - The firearm is maintained within a locked gun safe.
  - The firearm is locked with a locking device that renders the firearm inoperable.
- The loan does not exceed 60 days in duration.
- The loan is made without consideration.
- There is a form prescribed by the Department of Justice and available in editable form on the department's Internet Web site that explains the obligations imposed by this section that is signed by both the party loaning the firearm for storage and the person receiving the firearm.
- Both parties to the loan possess signed copies of the form required.

Members may wish to consider in what instances this loan provision would be utilized.

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