
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 746 **Hearing Date:** January 9, 2018
Author: Portantino
Version: January 3, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms and Ammunition: Prohibited Possession: Transfer to Licensed Dealer*

HISTORY

Source: Author

Prior Legislation: AB 103 (Budget), Ch. 17, Statutes of 2017
SB 112 (Budget & Fiscal Review), Ch.363, Statutes of 2017
AB 950 (Melendez), Ch. 205, Statutes of 2015
AB 539 (Pan), Ch. 739, Statutes of 2013

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill authorizes a person who has an outstanding warrant for a felony or a misdemeanor to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the period of prohibition.

Existing law provides that it is a felony for any person who has been convicted of a felony or another specified offense under the laws of the United States, this state, or any other state, government, or country or who is addicted to the use of any narcotic drug, to own, purchase, receive, or have in his or her possession or under custody or control any firearm. (Pen. Code § 29800.)

Existing law provides that it is an alternate felony/misdemeanor for any person who has been convicted of a specified misdemeanor, within 10 years of the conviction, to own, purchase, receive, or have in his or her possession or under custody or control of any firearm. (Pen. Code § 29805.)

Existing law requires the court, at the time a judgment is imposed which prohibits a person from owning, purchasing, receiving, possessing, or having custody or control of any firearm, to provide on a form supplied by the Department of Justice, a notice to the person informing him or her of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. (Pen. Code § 29810, subd. (a).)

Existing law provides that every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction or a protective order, as specified, is guilty of a public offense, punishable by up to one year in county jail or 16 months, two or three years in the state prison, a fine of up to \$1,000, or both. (Pen. Code § 29825, subd. (a).)

Existing law provides that every person who owns or possesses a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction or a protective order, as specified, is guilty of a public offense, punishable by up to one year in a county jail, a fine of up to \$1,000, or both. (Pen. Code § 29825, subd. (b).)

Existing law provides that the Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment. (Pen. Code § 29825, subd. (d).)

Existing law allows a person who is otherwise prohibited from possessing a firearm to possess the firearm if all of the following conditions are met:

- The person found the firearm or took the firearm from a person who was committing a crime against the person who found or took the firearm;
- 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 the firearm was transported to a law enforcement agency, it was transported in a specified manner; and,
- If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law. (Penal Code § 29850.)

Existing law provides that if a law enforcement agency determines that a person is the legal owner of any firearm deposited with the agency, that person is prohibited from possessing any firearm, and that the firearm is an otherwise legal firearm, the person is entitled to sell or transfer the firearm to a licensed dealer. (Pen. Code § 33870.)

Existing law allows persons prohibited from owning or possessing a firearm pursuant provisions 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 expire on a date specified in the court order. Requires a firearms dealer who stores a firearm under these circumstances to notify DOJ of the date that the dealer has taken possession of the firearm, and requires the Attorney General to maintain a record of this information. (Pen. Code § 11106.)

This bill authorizes a person who has an outstanding warrant for a felony or misdemeanor to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition.

COMMENTS

1. Need for This Bill

According to the author:

Last year (2017) the Legislature passed AB 103 and SB 112. AB 103 dealt with the issue of firearms [and ammunition] prohibitions for persons with outstanding warrants for persons – who if convicted of that offense – could not possess firearms, ammunition, or ammunition accessories by prohibiting them from possessing the same during the prohibition.

SB 746 applies the provisions in AB 539 (Pan), Ch. 739, Statutes of 2013 to allow relinquishment of firearms and ammunition to a dealer for storage while the person who is subject to the warrant prohibition or other temporary prohibition issue is resolved. AB 539 provided that in lieu of surrendering or otherwise transferring ownership of firearms where persons were prohibited, AB 539 allowed persons subject to various temporary prohibitions to store their firearms with a state licensed gun dealer. Under that process DOJ is notified that the items are surrendered [if guns], and the return of the gun is subject to DROS.

In 2015, after the gun violence restraining order (GVRO) process was enacted in 2014, AB 950 (Melendez), Ch. 205, Statutes of 2015 allowed a person, who is subject to a GVRO to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition. AB 950 also allowed if the firearms or ammunition have been surrendered to a law enforcement agency, the bill would entitle the owner to have them transferred to a licensed firearms dealer. AB 950 additionally provided for the transfer of ammunition to a licensed firearms dealer by any person who is prohibited from owning or possessing ammunition.

SB 746 clarifies that the AB 539 procedures applies to all temporary prohibitions and that includes ammunition. In terms of ammunition returns, AB 950 applied AB 539 to ammunition returns.

2. Surrender of Firearms and Ammunition

Prior to the enactment of SB 539 (Pan), Ch. 739, Statutes of 2013 a person who was prohibited from owning or possessing a firearm was entitled to sell or transfer his or her firearm to a licensed dealer if the firearm was deposited with a law enforcement agency and the agency determined that a person was the legal owner and the firearm is otherwise legal. (Pen. Code § 33870.) The ability to transfer firearms to dealers under the law did not specify whether an owner who was temporarily prohibited from possessing a firearm had the ability to take back the firearm when the prohibition ended. SB 539 explicitly provided for that alternative.

AB 1014 (Skinner), Chapter 872, Statutes of 2014, enacted a novel gun violence restraining order law in California to address concerns related to mental health and firearms possession after the Isla Vista shooting in Santa Barbara. Under the provisions of AB 1014, persons subject to gun violence restraining orders are required to either sell their weapons or surrender those firearms to law enforcement. AB 950 (Melendez), Ch. 205, Statutes of 2015 provided an option that is available for persons who are subject to domestic violence restraining orders. AB 950 provided the same remedy made available in SB 539 (Pan) for persons subject to a gun violence restraining order. By enacting AB 950 (Melendez), the original intent of AB 1014 was preserved, while the property interests of persons subject to restraint through a GVRO were also maintained.

This bill seeks to clarify that persons who are prohibited from possessing firearms and ammunition due to an active warrant following the passage of AB 103 (Budget), Ch. 17, Statutes of 2017 and SB 112 (Budget & Fiscal Review), Ch. 363, Statutes of 2017 may avail themselves of the same surrender provisions enacted in SB 539 (Pan).

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