
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1292 **Hearing Date:** June 18, 2019
Author: Bauer-Kahan
Version: May 30, 2019
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Firearms*

HISTORY

Source: Author

Prior Legislation: SB 746 (Portantino), Ch. 780, Stats. of 2018
AB 1609 (Alejo), Ch. 878, Stats. of 2014
SB 683 (Block), Ch. 761, Stats. of 2013

Support: California Sportsman's Lobby; Crossroads of the West Gun Shows; Outdoor Sportsmen's Coalition of California; Peace Officers' Research Association of California (PORAC); Safari Club International; Safari Club International Foundation

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to specify circumstances following the death of a firearm owner which allow a firearm to be transferred from one person to another by operation of law without the need to go through a firearms dealer. Additionally, makes technical changes to permit firearms transfers to law enforcement and through intestate succession.

Existing law states that the law requiring firearm transfer be conducted through a licensed dealer, does not apply to a person who takes title or possession of a firearm by operation of law if the person is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm and specified conditions are met. (Pen. Code, § 27920, subd. (a).)

Existing law specifies that if the person taking title or possession is receiving the firearm under specified probate conditions, the person shall do both of the following:

- 1) Within 30 days of taking possession, submit a report to the Department of Justice (DOJ), in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question; and

- 2) Prior to taking title or possession of the firearm, the person shall obtain a valid firearm safety certificate, except that in the case of a handgun, a valid unexpired handgun safety certificate may be presented. (Pen. Code, § 27920, subd. (a)(2).)

Existing law states that the prohibition on firearm importation into the state does 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:

- 1) The person acquires ownership of the firearm as an executor or administrator of an estate;
- 2) If acquisition of the firearm had occurred within this state, the receipt of the firearm by the executor or administrator would be exempt from the provisions regarding transfer of a firearm;
- 3) Within 30 days of taking possession of the firearm and importing, bringing, or transporting it into this state, the person shall submit a report to the DOJ, 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;
- 4) If the executor or administrator subsequently acquires ownership of that firearm in an individual capacity, prior to transferring ownership to himself or herself, he or she shall obtain a valid firearm safety certificate, except that in the case of a handgun, a valid unexpired handgun safety certificate may be used; and,
- 5) The executor or administrator is 18 years of age or older. (Pen. Code, § 27920, subd. (b)(1)-(5).)

Existing law states that the prohibition on firearm importation into the state does 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:

- 1) The person acquires ownership of the firearm by bequest or intestate succession as a surviving spouse or as the surviving registered domestic partner of the decedent who owned that firearm;
- 2) If acquisition of the firearm had occurred within this state, the receipt of the firearm by the surviving spouse or registered domestic partner would be exempt from the requirement that a transfer go through a licensed dealer;
- 3) Within 30 days of taking possession of the firearm and importing, bringing, or transporting it into this state, the person shall submit a report to the DOJ, 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; and,
- 4) 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. (Pen. Code, § 27920, subd. (c)(1)-(4).)

Existing law specifies that “operation of law” for purposes of firearms transfers includes, but is not limited to, any of the following:

- 1) The executor or administrator of an estate, if the estate includes a firearm;
- 2) A secured creditor or an agent or employee of a secured creditor when a firearm is possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code;

- 3) A levying officer, as defined;
- 4) A receiver performing the functions of a receiver, if the receivership estate includes a firearm;
- 5) A trustee in bankruptcy performing the duties of a trustee, if the bankruptcy estate includes a firearm;
- 6) An assignee for the benefit of creditors performing the functions of an assignee, if the assignment includes a firearm;
- 7) A transmutation of property between spouses, as specified;
- 8) A firearm received by the family of a police officer or deputy sheriff from a local agency, as specified; and,
- 9) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm, as specified. (Pen. Code, § 16960, subd. (a)-(i).)

Existing law exempts specified persons from the requirement to have firearm safety certificate before purchasing or receiving a firearm. (Pen. Code, § 31700.)

Existing law states that beginning on January 1, 2015, a resident of this California shall not import into this state, bring into this state, or transport into this state, any firearm that he or she purchased or otherwise obtained on or after January 1, 2015, from outside of this state unless he or she first has that firearm delivered to a dealer in this state for delivery to that resident, as specified. (Pen. Code, § 27585, subd. (a).)

This bill specifies that transfer by operation of law provisions and the exceptions apply to a decedent's personal representative, a person acting pursuant to the person's power of attorney, a trustee, a conservator, a guardian or guardian ad litem, or a special administrator, as specified.

Existing law generally prohibits the carrying of a concealed firearm, a violation of this provision of law is a misdemeanor. (Pen. Code, § 25400.)

This bill exempts transporting a firearm by a person who took the firearm from a person who was committing a crime against the person who took the firearm, and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

Existing law generally prohibits the open carrying of all firearms. (Pen. Code, §§ 26350 & 26400.)

This bill exempts the following from the prohibition of openly carrying a firearm:

- 1) By a person who finds that handgun, if the person is transporting the handgun in order to comply with California Civil Code "lost or unclaimed property" provisions they pertain to that firearm, and, if the person is transporting the firearm to a law enforcement agency, the person gives prior notice to the law enforcement agency that the person is transporting the handgun to the law enforcement agency.

- 2) By a person who finds that handgun and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.
- 3) By a person who took the firearm from a person who was committing a crime against the person and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting that handgun to the law enforcement agency for disposition according to law.

Existing law requires a license to sell, lease, or transfer a firearm. (Pen. Code, § 26500.)

This bill would exempt the transfer of a firearm to a law enforcement agency, or to a trustee of a trust, as specified.

COMMENTS

1. Need for This Bill

The current operation of law list has not been updated in 20 years. As a result, who can utilize it is subject to what the Department of Justice will consider an operation of law transaction given that the statutes use the term ‘including, but not limited to’. This has created issues in the area of estates, trusts and power of attorney situations – particularly when people have dementia or other issues. There is also an issue of how the power of attorney provisions intersect with Proposition 63 so that the Department of Justice knows who relinquished what gun to whom.

2. Taking Possession of a Firearm by Operation of Law

This bill seeks to clarify that existing exemptions to specified firearms requirements when a firearm is transferred because the original owner has died and the firearm is part of the decedent’s estate apply to individuals involved in executing the estate. These transfers occur by operation of law. “By operation of law” is a legal outcome that automatically occurs whether or not the affected party intends it to. The individuals addressed in this bill include a personal representative of an estate, that includes a firearm; the trustee of a trust that includes a firearm and that was part of a will that created the trust; a firearm passed to a decedent’s successor, as specified in the Probate Code; and a person acting pursuant to a decedent’s power of attorney, as specified in the Probate Code.

3. Transportation and Transfer of Firearms

This bill seeks to clarify rules related to exemptions to openly carrying and carrying concealed firearms for the purpose of transferring firearms to law enforcement or to trustees. Additionally, existing law requires that a person has a license to transfer firearms. Most firearms transactions must go through licensed dealers. While skirting any of these requirement would be a technical violation of current law, this bill would explicitly exempt the transferring and transportation of these firearms for very limited reasons related to intestate transfer or transfer to law enforcement.

4. Argument in Support

According to The California Sportsman's Lobby:

The bill would provide that the transfer by operation of law provisions of existing law, and the exceptions to the transfer through a licensed firearm dealer requirement, apply to a decedent's personal representative, to a person acting pursuant to the person's power of attorney, a trustee, a conservator, a guardian ad litem, or a special administrator, as specified.

-- END --