
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 156 **Hearing Date:** May 10, 2016
Author: McCarty
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Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Ammunition*

HISTORY

Source: Author

Prior Legislation: SB 53 (De León) – failed passage on Assembly Floor, 2013-2014
SB 427 (De León) – vetoed, 2011-2012
AB 2358 (De León) – failed passage on Senate Floor, 2010
AB 1663 (Hagman) – failed passage in Assembly Public Safety, 2010
AB 962 (De León) – Ch. 628, Statutes of 2009
AB 2062 (De León) – held in Senate Appropriations Committee, 2008
AB 362 (De León) – held in Senate Appropriations Committee, 2007
AB 996 (Ridley-Thomas) – vetoed, 2006
AB 352 (Koretz) – died in conference, 2006
AB 2714 (Torrico) – vetoed, 2005-06
SB 1152 (Scott) – vetoed, 2003-04

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; Coalition Against Gun Violence, a Santa Barbara County Coalition; Law Center to Prevent Gun Violence

Opposition: Crossroads of the West; California Sportsman's Lobby; California State Sheriffs' Association; Firearms Policy Coalition; Outdoor Sportsmen's Coalition of California; National Rifle Association; National Shooting Sports Foundation; Safari Club International

Assembly Floor Vote: Not Relevant

PURPOSE

The purpose of this legislation to create a new regulatory framework for the sale and purchase of ammunition in California, as specified.

Current law prohibits possession of ammunition by a person under 18 years of age, except as specified. A violation is generally punishable as a misdemeanor, but, if the minor has been found guilty of violating certain enumerated offenses previously, a violation may be punished as either a felony by 16 months, two or three years in county jail, or as a misdemeanor by up to one year in the county jail. (Penal Code §§ 29650 and 29700.)

Current law provides that selling any ammunition to a person under the age of 18, or selling ammunition designed and intended for a handgun to a person under the age of 21 is a misdemeanor. (Penal Code § 30300.)

Current law provides that, except as specified, any person who is prohibited from owning or possessing a firearm is also prohibited from owning, or possessing ammunition. A violation may be punished as either a felony by 16 months, two or three years in state prison or as a misdemeanor by up to one year in the county jail. (Penal Code § 30305(a).)

Current law provides that, except as specified, a person enjoined from engaging in activity pursuant to an injunction against that person as a member of a criminal street gang is prohibited from owning or possessing ammunition. Violation of this section is punishable as a misdemeanor. (Penal Code § 30305(b).)

Current law provides that supplying, selling, or delivering ammunition to someone that a person knows or reasonably should know is prohibited from owning or possessing ammunition is a misdemeanor punishable by up to one year in the county jail. (Penal Code § 30306.)

Current law provides that possession of ammunition on school grounds without the written permission of the school district superintendent is prohibited except for persons who have been issued a license to carry a concealed weapon or in limited situations involving law enforcement or military personnel. Violation of this section is punishable as a misdemeanor. (Penal Code § 30310.)

Current law prohibits possession of any handgun ammunition designed primarily to penetrate metal or armor. A violation is punishable as either a felony by 16 months, two or three years in county jail or as a misdemeanor by up to one year in the county jail, unless the person found the ammunition and they are not otherwise prohibited from possessing firearms or ammunition, and they are transporting it to a law enforcement agency for disposal. (Penal Code § 30315.)

Current law provides that manufacturing, importing, or selling handgun ammunition designed primarily to penetrate metal or armor is a felony, punishable by 16 months, two or three years in state prison and a fine of up to \$5,000, or both. (Penal Code § 30320.)

Current law provides that, with limited exceptions, delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face transaction with bona fide evidence of identity from the purchaser. Violation of this section is punishable as a misdemeanor. (Penal Code § 30312.)*

Current law provides that vendors of handgun ammunition must comply with certain conditions, requirements and prohibitions, with limited exceptions, including not selling or transferring ownership of any handgun ammunition without, at the time of delivery, legibly recording the following information. (Penal Code § 30352.):*

- the date of the sale or other transaction;
- the purchaser's/transferee's driver's license or ID number and the state of issuance;
- the brand, type, and amount of ammunition sold or otherwise transferred.
- the purchaser's/transferee's signature;

- the name of the salesperson who processed the sale or other transaction;
- the right thumbprint of the purchaser or transferee on the above form;
- the purchaser's /transferee's full residential address and telephone number; and
- the purchaser's/transferee's date of birth.

Current law requires that handgun ammunition vendors must keep these records for a period of not less than 5 years and must make these records available to inspection by specified law enforcement during normal business hours. (Penal Code §§ 30355, 30357.)*

Current law requires that handgun ammunition vendors shall not knowingly make a false entry or fail to make an entry or obtain the required thumbprint. (Penal Code § 30360.)*

Current law provides that violations of the above laws regarding handgun ammunition vendors are punishable as a misdemeanor. (Penal Code § 30365.)*

Current law defines "handgun ammunition" as "ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles" and exempting, as specified:

- ammunition designed and intended to be used in an antique firearm; and
- blanks. (Penal Code § 16650.)*

* Enforcement of these sections is currently stayed per order of the Fresno County Superior Court in *Parker v. State of California*, No. 10 CECG 02116. That order is currently on appeal.

Ammunition Vendor License

This bill provides that the term "vendor" for purposes of ammunition sales means "ammunition vendor," and, commencing on January 1, 2018, only a licensed ammunition vendor may sell ammunition, as specified.

This bill defines "ammunition" as one or more loaded cartridges consisting of a primer case, propellant, and with one or more projectiles. "Ammunition" does not include blanks.

This bill would authorize the Department of Justice ("the department") to accept applications for ammunition vendor licenses, commencing on July 1, 2017, and would create an application process for ammunition vendors, as specified. This bill provides that the ammunition vendor license is only valid for one year and would require the ammunition vendor to conduct business at a location specified in the license, except in the case of gun shows or events, as specified. The bill would require ammunition sales at a gun show or event to comply with certain requirements pertaining to ammunition transfers and recordkeeping, the violation of which is a crime.

This bill exempts the following from having to have an ammunition vendor license:

- A commercial hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity.
- A domesticated game bird hunting club, as defined, provided the ammunition is used and consumed on the licensed premises with engage in lawful hunting activity.

- A domesticated migratory game bird shooting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity.
- A nonprofit or public benefit corporation, as defined, that engages in recreational shooting and lawful hunting activity provided that the ammunition is used and consumed during the shooting or hunting event conducted by that nonprofit or public benefit corporation.
- A target facility that holds a business or regulatory license provided that the ammunition is at all times kept within the facility's premises and used on the premises.
- A person who sells no more than 50 rounds of ammunition to one vendor in one month or cumulatively sells no more than 250 rounds per year.

This bill allows the department to charge applicants for a ammunition vendor license a fee sufficient to cover the reasonable costs of issuing a certificate of eligibility, as specified. Except for the following, who the department is required to, upon request and in a manner prescribed, issue ammunition vendor licenses:

- A firearms dealer, as specified.
- A person who is on the centralized list of federal firearms licensees, as specified.
- A gunsmith, as specified.
- A wholesaler, as specified.
- A manufacturer or importer of firearms or ammunition with a specified license.

This bill provides that the department is to require that any agent or employee of a vendor who handles, sells, or delivers ammunition to obtain and provide to the ammunition vendor a certificate of eligibility, as specified.

This bill would establish the Ammunition Special Account, into which vendor license fees would be deposited and made available, upon appropriation by the Legislature, to the department for purposes of enforcing the ammunition vendor licensing provisions.

Ammunition Purchaser Authorization

This bill requires the department to electronically approve the purchase or transfer of ammunition through a vendor, as specified. This approval must occur at the time of purchase or transfer, prior to the purchaser or transferee taking possession of the ammunition.

This bill specifies that, to determine if the purchaser or transferee is eligible to purchase or possess ammunition, the department is required to cross-reference the ammunition purchaser's or transferee's name, date of birth, current address, and driver's license or other government identification number, as specified, with the information maintained in the Automated Firearms System (AFS). If the purchaser's or transferee's information does not match an AFS entry, the transaction must be denied. If the purchaser's or transferee's information matches an AFS entry, the department is required to determine if the purchaser or transferee falls within a class of persons who are prohibited from owning or possessing ammunition by cross-referencing the Prohibited Armed Persons file, as specified. If the purchaser or transferee is prohibited from owning or possessing a firearm, the transaction is denied. This bill provides that the department can charge a per-transaction fee not to exceed one dollar (\$1), not to exceed reasonable regulatory costs, as specified.

This bill prohibits the vendor from providing a purchaser or transferee ammunition without departmental approval, as specified.

This bill provides that if a vendor cannot electronically verify a person's eligibility to purchase or possess ammunition via an internet connection, the department must provide a phone line to verify eligibility, as specified.

This bill states that these provisions do not apply to the sale, delivery, or transfer of ammunition to any of the following, if properly identified prior to the delivery of the ammunition by the vendor:

- A firearms dealer, as specified.
- A person who is on the centralized list of federal firearms licensees, as specified.
- A gunsmith, as specified.
- A wholesaler, as specified.
- A manufacturer or importer of firearms or ammunition with a specified license.
- An ammunition vendor.
- A person whose licensed premises are outside of this state and who is licensed as a dealer or collector of firearms, as specified.
- A person who is a licensed collector, whose licensed premises are within the state, and who has a current certificate of eligibility, as specified.
- An authorized law enforcement representative, as specified.
- A sworn peace officer, as specified.
- A target facility, as specified.
- A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises and used on the premises.
- A commercial hunting club, as specified.
- A domesticated game bird hunting club, as specified.
- A domesticated migratory game bird shooting club, as specified.
- A participant at a shooting or hunting event conducted by any of the following:
 - A commercial hunting club, as specified, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity.
 - A domesticated game bird hunting club, as specified, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity.
 - A domesticated migratory game bird hunting club, as specified, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity.
- A nonprofit mutual or public benefit corporation, as specified.
- A participant at a shooting or hunting event conducted by a nonprofit mutual or public benefit corporation, as specified, provided that the ammunition is used and consumed during the event.
- A person who is authorized to carry loaded firearms, as specified.
- A holder of a special weapons permit, as specified.
- A holder of a valid entertainment firearms permit, as specified.
- A person approved by the department for a single ammunition transaction or purchase, as specified.

This bill requires the Department of Justice to develop a procedure in which a person who is not prohibited from purchasing or possessing ammunition may be approved for a single ammunition transaction or purchase, and allows the department to charge a fee, as specified.

This bill provides that a violation of these provisions is a misdemeanor, as specified.

Ammunition Sale Provisions

This bill provides that the sale, delivery or transfer of ammunition may only occur in a face-to-face transaction with the seller, deliverer, or transferor being provided bona fide evidence of identity from the purchaser or transferee, provided, however, that ammunition may be purchased over the Internet or through other means of remote ordering if an ammunition vendor in this state initially receives the ammunition and processes the transfer, as specified. This section, does not apply to or affect the sale, delivery or transfer of ammunition to any of the following:

- A firearms dealer, as specified.
- A person who is on the centralized list of federal firearms licensees, as specified.
- A gunsmith, as specified.
- A wholesaler, as specified.
- A manufacturer or importer of firearms or ammunition with a specified license.
- An ammunition vendor.
- A person whose licensed premises are outside of this state and who is licensed as a dealer or collector of firearms, as specified.
- A person who is a licensed collector, whose licensed premises are within the state, and who has a current certificate of eligibility, as specified.
- An authorized law enforcement representative, as specified.
- A sworn peace officer, as specified.
- A target facility, as specified.
- A commercial hunting club, as specified.
- A domesticated game bird hunting club, as specified.
- A domesticated migratory game bird shooting club, as specified.
- A nonprofit mutual or public benefit corporation, as specified.
- A consultant-evaluator.
- A contract or common carrier or an authorized agent or employee thereof, as specified.

This bill provides that, when neither party in an ammunition sale is a vendor, the following applies:

- The seller must deliver the ammunition to the vendor to process the transaction. The ammunition vendor may charge a fee not exceeding ten dollars to process the transaction.
- The vendor must then promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise.
- If the vendor cannot legally deliver the ammunition to the purchaser, the vendor must return the ammunition to the seller, as specified.

This bill provides that the sale of ammunition between the following is authorized so long as it does not exceed fifty rounds per month:

- The sale of ammunition between licensed hunters while engaged in lawful hunting activity.
- The same of ammunition between immediate family members, spouses, or registered domestic partners.

This bill prohibits, as of July 1, 2019, a resident of this state from bringing or transporting into this state any ammunition from outside of this state, unless he or she first has the ammunition delivered to an ammunition vendor in this state, as specified. The following are exempt from this requirement:

- A firearms dealer, as specified.
- A person who is on the centralized list of federal firearms licensees, as specified.
- A gunsmith, as specified.
- A wholesaler, as specified.
- A manufacturer or importer of firearms or ammunition with a specified license.
- An ammunition vendor.
- A person who is a licensed collector, whose licensed premises are within the state, and who has a current certificate of eligibility, as specified.
- An authorized law enforcement representative, as specified.
- A sworn peace officer, as specified.
- A contract or common carrier or an authorized agent or employee thereof, as specified.
- A person who purchases the ammunition from an immediate family member, spouse, or registered domestic partner if the person brings or transports into this state no more than 50 rounds.
- The executor or administrator of an estate that includes ammunition.
- A person that at the time he or she acquired the ammunition was not a resident of this state.
- Ammunition that is imported into this county, as specified.
- A licensed hunter who purchased the ammunition outside of this state for use in a lawful hunting activity that occurred outside of this state if the person brings or imports not more than 50 rounds into this state and the ammunition is designed and intended for use in the firearm the hunter used in that hunting activity.
- A person who attended and participated in an organized competitive match or league competition that involves the use of firearms in a match or competition, as specified, and the person brings or imports into this state no more than 50 rounds of ammunition designed and intended to be used in the firearm the person used in the match or competition.

This bill requires an ammunition vendor to, commencing on July 1, 2019, electronically submit¹ specified purchaser information to the department, in a manner prescribed by the department, including:

¹ In the case that a vendor cannot submit the information electronically via an Internet connection, this requires that the the department provide a telephone line to submit the information if the vendor can demonstrate legitimate geographic and telecommunications limitations to submitting the information electronically, and the department approves the vendor's use of the telephone line.

- The purchaser's full name.
- The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.
- The date of the sale or other transaction.
- The brand, type, and amount of ammunition sold or otherwise transferred.
- The name of the salesperson who processed the sale or other transaction.
- The purchaser's or transferee's full residential address and telephone number.
- The purchaser's or transferee's date of birth.

The bill would require the department to retain this purchaser information for two years in a database to be known as the Ammunition Purchase Records file and would prescribe the authority if the department and other entities to use this file, as specified. The following are exempted from this requirement:

- A firearms dealer, as specified.
- A person who is on the centralized list of federal firearms licensees, as specified.
- A gunsmith, as specified.
- A wholesaler, as specified.
- A manufacturer or importer of firearms or ammunition with a specified license.
- An authorized law enforcement representative, as specified.
- A sworn peace officer, as specified.
- A target facility, as specified.
- A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises and used on the premises.
- A commercial hunting club, as specified.
- A domesticated game bird hunting club, as specified.
- A domesticated migratory game bird shooting club, as specified.
- A participant at a shooting or hunting event conducted by any of the following:
 - A commercial hunting club, as specified, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity.
 - A domesticated game bird hunting club, as specified, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity.
 - A domesticated migratory game bird hunting club, as specified, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity.
- A nonprofit mutual or public benefit corporation, as specified.
- A participant at a shooting or hunting event conducted by a nonprofit mutual or public benefit corporation, as specified, provided that the ammunition is used and consumed during the event.

This bill states that an ammunition vendor shall not knowingly make a false entry in, or fail to make a required entry of information, as specified.

This bill makes a violation of these provisions a misdemeanor, as specified.

This bill, additionally, makes it a misdemeanor for a person, corporation, firm, or other business enterprise to provide, as specified, ammunition to an individual that the person, corporation, firm, or other business entity knows or has cause to believe is not the actual purchaser or transferee of the ammunition, or knows of has cause to believe that the ammunition is to be sold or transferred to a person prohibited from possessing or owning ammunition.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and

- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Ammunition Purchases by Prohibited Persons: The Scope of The Problem

In Los Angeles, a city ordinance requires that vendors selling any firearm ammunition within the city limits must record the following information:

- The date of the transaction;
- The name, address and date of birth of the transferee;
- The transferee's driver's license or other identification number and the state in which it was issued;
- The brand, type and amount of ammunition transferred;
- The transferee's signature;
- The name of the sales person who processed the transaction; and
- The vendor shall also at the time of purchase or transfer obtain the right thumb print of the purchaser or transferee on the above-referenced form.

(Los Angeles Municipal Code, Ch. V, § 55.11.)

Using this information, required to be maintained by ammunition dealers, a RAND corporation study examined ammunition sales during a two-month period in Los Angeles in 2004. RAND reported:

Substantial amounts of bullets and shotgun shells sold in Los Angeles are purchased by felons and others who are prohibited by law from buying ammunition, according to a new RAND Corporation study that is the first to examine the amount of ammunition sold to criminals.

With support from the National Institute of Justice, researchers analyzed records detailing ammunition sales made during April and May of 2004 at 10 of the 13 retail stores in the city of Los Angeles that sell bullets and shotgun shells to the public.

A total of 2,031 people purchased 436,956 rounds of ammunition during the study period. This included 10,050 rounds of ammunition purchased by 52 people with felony convictions or other violations on their records that legally prohibit them from buying ammunition.

While federal and state laws prohibit certain people from buying ammunition, there are no mechanisms to enforce the rules. Los Angeles and a few other cities require ammunition sellers to collect information about the purchasers, but in the past those records were not routinely reviewed.

“Strategies to reduce gun violence in communities thus far have focused intensely on the guns,” said George Tita, a criminologist at the University of California,

Irvine, and lead author of the study that appears in the October edition of the journal *Injury Prevention*. “More effective policies will need to address access to ammunition as well as access to guns.”

While the study examined only a short period of time, researchers say it provides the first reliable information about whether ammunition is routinely purchased by people who are barred from possessing ammunition.

“We found that it’s not uncommon for people with criminal records simply to buy ammunition at a retail store,” said Greg Ridgeway, co-author of the study and a researcher at RAND, a nonprofit research organization. “It is particularly risky for communities to have guns and ammunition in the hands of such people.” Past studies have shown that guns and ammunition possessed by felons and others prohibited from owning weapons are more likely to be used in violent crimes than weapons bought by people with no criminal histories.

People who buy ammunition in the city of Los Angeles must show a driver's license or other photo identification and leave a fingerprint with the seller, who maintains records about the transaction. An unsuccessful bill introduced in the California legislature in 2005 would have required ammunition dealers in California to log all ammunition sales and their purchasers in a state database.

The RAND study says if lawmakers want to prohibit the illegal sale of ammunition they could extend the instant background checks required before guns are sold to also cover the sale of ammunition.

However, unless such a step was taken at the state level, buyers could simply purchase ammunition in a nearby city to get around a local law. In addition, people prohibited from purchasing ammunition could begin buying ammunition from unregulated private sellers in the secondary firearms markets, researchers said.

However, studies conducted by other researchers in different communities with high levels of gun violence found that more careful enforcement of ammunition purchases may not necessarily lead to the creation of a black market in ammunition, according to researchers.

Another alternative is for law enforcement officials to take advantage of ammunition sales records to provide tips about felons who may illegally possess firearms, according to researchers. Ammunition logs have been used by Los Angeles area law enforcement officials to obtain search warrants that have led to the recovery of illegal firearms, according to the study.

Researchers say their study was limited by the small number of ammunition sales outlets involved and the relatively brief study period. Most of the outlets studied are located in the San Fernando Valley in the northern section of Los Angeles.

(http://www.rand.org/congress/newsletters/safety_justice/1106/ammunition.html.)

2. Background – AB 962 and the Ruling in *Parker v. State of California, et al.*

AB 962 (De León), Chap. 628, Statutes of 2009, created several new requirements regarding handgun ammunition sales. These include requiring that handgun ammunition sellers obtain personal identification information from buyers and retain that information for inspection by law enforcement upon request, (Penal Code §§ 30345, et seq.) and that all delivery of handgun ammunition take place in a face-to-face transaction (prohibiting direct sales over the internet). (Penal Code § 30312.) On January 31, 2011, a Superior Court in Fresno ruled that the definition of “handgun ammunition” contained in sections 12060(b) and 12318(b)(2) (now renumbered as section 16650) was unconstitutionally vague, rendering invalid the provisions of sections 12060, 12061 (now renumbered as sections 30345, et seq.) and 12318. Each of these sections were enacted pursuant to AB 962.² As a result of this finding the Court enjoined the State Attorney General from enforcing those statutes. (*Parker v. State of California, et al.*, Fresno County Superior Court, Case No. 10 CECG 02116, Order Denying Plaintiff’s Motion for Summary Judgment and Granting In Part and Denying In Part Defendant’s Motion for Summary Adjudication, , pages 4, 11-17.)

The Court stated:

Because the language of the definition of “handgun ammunition” fundamentally requires each law enforcement officer to make a subjective determination as to whether or not the ammunition at issue is ammunition “principally for use” in a handgun and then subjectively apply their own definition to the situation before them, the definition of “handgun ammunition” established in section 12060(b) and 12318(b)(2) gives unlimited discretion to each individual law enforcement officer to determine arbitrarily if the ammunition at issue is “handgun ammunition” and to apply their particular classification of “handgun ammunition” or not to the specific issue before them. (*Id* at pages 14-15.)

The state appealed this decision and the 5th District Court of Appeal stated in its holding,

This appeal presents a facial challenge under the void-for-vagueness doctrine to a statutory scheme within the Penal Code regulating the sale, display, and transfer of “handgun ammunition.” The statutes at issue, former sections 12060, 12061 and 12318, defined “handgun ammunition” as ammunition “principally for use” in handguns as opposed to rifles and other firearms. In the proceedings below, respondents challenged the constitutionality of these statutes on grounds that they failed to provide adequate notice of the conduct proscribed and lacked sufficiently definite guidelines to prevent arbitrary or discriminatory enforcement by police.

The trial court agreed with respondents, declaring the challenged statutes constitutionally invalid and issuing a permanent injunction against their enforcement. Appellants contend the statutes are not unconstitutional because it is possible to conceive of circumstances in which the statutory language would not be vague. These issues are addressed in the first part of our opinion. The second part of the opinion pertains to the trial court’s partial denial of a motion to

² Old Penal Code section 12318 defines “handgun ammunition by cross-reference to old section 12323(a), now renumbered section 16650.

tax costs filed by appellants after the permanent injunction was issued. We affirm the judgment in full. (*Parker v. State of California*, 221 Cal. App. 4th 340, 346-47 (Cal. App. 5th Dist. 2013).)

Parker v. State of California is currently pending before the California Supreme Court.

3. Effect of this Legislation

This legislation repeals and reconstructs the provisions of the Penal Code relating to ammunition vendors. In doing so, this legislation sets up a new regulatory framework for the sale and purchase of ammunition in California. First, this legislation applies its provisions to *all* ammunition, thereby avoiding the vagueness concerns raised in the *Parker* case. As discussed in detail above, this legislation:

- Requires anyone wishing to sell ammunition in California to obtain an Ammunition Vendor's License.
- Requires licensed ammunition vendors to have ammunition transactions approved by the department prior to delivering the ammunition to the purchaser. The department would then perform a real-time approval by utilizing its current databases to determine if: (1) the purchaser has a firearm; and, (2) if the purchaser has a firearm in the system, whether the purchaser is a prohibited person. If the purchaser has a firearm and is not prohibited, the transaction will be approved.
- Requires ammunition vendors to collect certain purchaser information.
- Requires that ammunition be sold and purchased in a face-to-face transaction.³
- Prohibits a resident of this state from bringing or transporting into this state any ammunition from outside of this state, unless he or she first has the ammunition delivered to an ammunition vendor in this state.
- Exempts a number of categories of individuals from its provisions.

Thus, in order to purchase ammunition in California, an individual would have to pay a transaction fee, which is set at a maximum of one-dollar, and have at least one firearm in the department's Automated Firearms System. Since the Department of Justice did not begin collecting long gun records until 2014, there are likely a number of firearms owners in California that do not have firearms in the Automated Firearms System. For those individuals, and others, the Department of Justice has an existing procedure that would allow firearms owners to report firearms ownership. (<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/volreg.Pdf?>.)

4. Safety for All Act of 2016

On May 3, 2016, the Assembly and Senate Committees on Public Safety held a joint hearing on the Safety for All Act of 2016, pursuant to Elections Code section 9034.

³ This legislation states that ammunition may be purchased over the Internet or through other means of remote ordering if an ammunition vendor in this state initially receives the ammunition and processes the transfer, as specified.

At this joint hearing, members of the committees heard from the Legislative Analyst's Office, as well as the proponents and opponents of the initiative. While the initiative makes a variety of changes to California's firearms laws, its proposed modifications to ammunition regulation is particularly relevant to this measure.

According to the Legislative Analyst's Office:

This measure regulates all ammunition sales in a manner similar to firearm sales. The measure defines ammunition as "one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles."

Ammunition Vendor Licenses. Under the measure, vendors must obtain a one-year ammunition vendor license from DOJ to sell more than 500 rounds of ammunition in a 30-day period. In order to obtain a license, vendors would need to meet a number of requirements, such as not being a prohibited person and meeting certain other federal, state, or local government requirements. Firearms dealers complying with existing federal and state licensing requirements related to firearms would be automatically deemed licensed ammunition vendors. Failure to comply with the licensing requirements would be a misdemeanor, punishable by a fine and/or county jail. The measure authorizes DOJ to charge a licensing fee to support its costs to administer and enforce the above licensing requirements.

Ammunition Purchase Authorizations. The measure also requires an individual seeking to purchase ammunition to obtain a four-year ammunition purchase authorization from DOJ beginning in July 2019. In order to receive such authorization, the individual must be 18 or over and not a prohibited person. In addition, ammunition vendors would be required to verify with DOJ that an individual has an ammunition purchase authorization before completing a transaction. The measure also requires ammunition vendors to collect and submit specified information—such as the date of the transaction, the purchasers' identification information, and the type of ammunition purchased—to DOJ for retention in a centralized database for law enforcement purposes. The measure authorizes DOJ to charge a fee from individuals seeking an ammunition purchase authorization to support its costs for administering and enforcing the above requirements. The measure limits the fee to \$50 per person, but allows the fee to be adjusted annually for inflation.

Other Requirements. The measure also includes a number of other regulatory requirements related to ammunition. For example, the measure requires that nearly all ammunition sales (including Internet and out-of-state purchases) be conducted through a licensed ammunition vendor beginning in 2018. In addition, firearms dealers and ammunition vendors must require employees who handle, sell, or deliver firearms or ammunition to obtain and provide certification from DOJ demonstrating that they are not a prohibited person. Finally, ammunition vendors who sell to an individual who they know or have cause to believe is obtaining the ammunition on behalf of a prohibited person would be guilty of an infraction (punishable by a fine) or misdemeanor (punishable by a fine and/or imprisonment in county jail).

(<http://www.lao.ca.gov/BallotAnalysis/Initiative/2015-098>.)