
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 2362 **Hearing Date:** August 7, 2020
Author: Muratsuchi
Version: February 18, 2020
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms Dealers: Conduct of Business*

HISTORY

Source: Brady United Against Gun Violence California

Prior Legislation: AB 1064 (Muratsuchi), 2019, held in Assm. Appropriations

Support: American Academy of Pediatrics, California; California Department of Justice; NeverAgainCA

Opposition: California Rifle and Pistol Association; Gun Owners of California; National Rifle Association; National Shooting Sports Foundation

Assembly Floor Vote: 55 - 20

PURPOSE

The purpose of this legislation is to authorize the Department of Justice (DOJ) to impose civil fines on firearms dealers for breaches of regulations or prohibitions related to their firearms dealers license.

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, who 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:

- 1) The building designated in the license;
- 2) The places specified as express exceptions; and,
- 3) 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. (Pen. Code § 26805, subd. (d).)

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).)

Existing law requires that firearms be secured at any time when the dealer is not open for business, as specified. (Pen. Code, § 26890.)

This bill permits the Department of Justice (DOJ) to impose a civil fine of up to \$1,000 against firearms dealers for a breach of specified prohibitions relating to firearms dealer licensing.

This bill provides for a civil fine of up to \$3,000 for breaches that subject a licensee to forfeiture of their firearms dealer license for either of the following:

- 1) The licensee previously received written notification from the DOJ regarding the breach and subsequently failed to take timely corrective action; or
- 2) The licensee is otherwise determined by the DOJ to have knowingly or with gross negligence violated a regulation or prohibition related to licensing.

This bill allows DOJ to adopt regulations setting fine amounts and setting up an appeals process.

COMMENTS

1. Need for This Bill

According to the author:

ATF data confirms that firearms dealers are the leading source of crime guns on the black market. Though California has enacted some laws to regulate gun dealers, it has not done enough to ensure that dealers act responsibly. Stronger oversight is necessary to prevent gun dealer practices that endanger our communities.

Unfortunately, federal law enforcement has limited resources to oversee the more than 2,300 licensed gun dealers in our state. A 2010 Washington Post report found that, due to limited staffing, ATF could only inspect gun dealers

once *per decade* on average. These limitations, combined with weak state and federal dealer laws, allow too many bad apple gun dealers to evade accountability.

2. Imposition of Civil Fines on Firearms Dealers

In order to operate in California, firearms dealers and license holders must have: (a) a Federal Firearms License; (b) a license issued by a county or other local agency and (c) a Certificate of Eligibility issued by the DOJ. If a dealer has all of these items, they are included on the DOJ-maintained centralized list that allows them to operate their business.

This bill proposes new fines related to violations of rules imposed upon licensees. The fines suggested are up to a \$1,000 civil fine for simple violations, and up to \$3,000 fines for violations when the licensee previously received written notification from the DOJ regarding the breach and failed to take corrective action, or the 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.

Arguably, imposing civil fines and allowing for an opportunity to fix licensing errors makes more sense than pulling a firearms dealer's license for any violation, no matter how minor.

3. Argument in Support

According to the *California Department of Justice*:

In order to operate in California, firearms dealers and license holders must have (1) a Federal Firearms License, (2) a license issued by a county or other local agency, and (3) a Certificate of Eligibility issued by the DOJ. If they have all of these items, they are included on the DOJ-maintained centralized list that allows them to operate their business. The DOJ conducts spontaneous on-site inspections of dealers and license holders to ensure they are complying with transfer requirements, dealer record and record retention requirements, facility maintenance and security requirements, and waiting period requirements.

If a dealer or license holder is out of compliance, the DOJ sends written notification requesting corrective action. Follow up inspections may be performed to ensure corrective action has been taken. Not every instance of non-compliance warrants revocation of a certificate or removal from the centralized list; however, DOJ lacks authority to impose progressive disciplinary actions. For example, dealers and license holders are required to update the safety signage on their business premises with the correct font and text size as specified by statute. Repeated violation for incorrect font size would warrant some level of penalty that is short of removal from the centralized list.

Revocation and removal from the centralized list ultimately results in a person's ability to operate and is a heavy-handed consequence when an infraction is minor. AB 2362 grants DOJ the ability to impose aggressive discipline policies that will hold dealers and license holders accountable without irreparably penalizing them for minor mistakes or oversight. For example, a monetary fine could be imposed against a dealer or license holder that fails to take corrective action after receiving a warning for a minor offense.

4. Argument in Opposition

According to the *California Rifle and Pistol Association*:

Commencing July 1, 2022, AB 2362 would authorize DOJ to impose a civil fine on licensed firearms dealers not exceeding \$1,000 for paper work violations, and a civil fine not exceeding \$3,000 for a violation when the licensee had received written notification from the DOJ regarding the violation and fails to take corrective action and fails to take corrective action, as specified, or the DOJ determines the licensee committed the violation knowingly or with gross negligence.

The decision to bestow additional authority to the Department could lead to needless, punitive measures against firearms dealers who may have made an insignificant mistake stemming from lack of responsiveness from the DOJ. Existing law already regulates licensed firearms dealers and provides that a license is subject to forfeiture for breach of specified prohibitions of law. In other words the DOJ already has the authority to terminate noncompliant firearms dealers!

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