
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 2699 **Hearing Date:** August 12, 2020
Author: Santiago
Version: August 10, 2020
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Unsafe Handguns*

HISTORY

Source: California Statewide Law Enforcement Association; Mountains Recreation and Conservation Authority

Prior Legislation: AB 1794 (Jones-Sawyer), held Sen. Appropriations
AB 1872 (Voepel), Ch. 56, Stats. of 2018.
AB 2165 (Bonta), Ch. 640, Stats. of 2016.
AB 892 (Achadjian), Ch. 203, Stats. of 2015.

Support: Unknown

Opposition: Women Against Gun Violence

Assembly Floor Vote: 74 - 0

PURPOSE

This bill 1) imposes new restrictions on law enforcement entities that are permitted to carry off-roster handguns, and 2) exempts various law enforcement entities or sworn officers of those entities from the prohibitions against the sale or purchase of an “unsafe” handgun.

Existing law requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code § 32000, subd. (a).) Specifies that this section shall not apply to any of the following:

- 1) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this state;

- 2) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section;
- 3) Firearms listed as curios or relics, as defined in federal law; and,
- 4) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person; (Pen. Code, § 32000, subd. (b).)

Existing law specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

Existing law defines "unsafe handgun" as "any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified." (Pen. Code, § 31910.)

Existing law requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010.)

Existing law requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)

Existing law provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code, § 32015, subd. (b)(1).)

Existing law provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

Existing law states that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:

- 1) The manufacturer petitions the AG for reinstatement of the handgun model;
- 2) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;
- 3) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;
- 4) The three handguns samples shall only be tested once. If the sample fails it may not be retested;
- 5) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;
- 6) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,
- 7) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subs. (a)-(g).)

Existing law provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

- 1) Finish, including, but not limited to bluing, chrome plating or engraving;
- 2) The material from which the grips are made;
- 3) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm; and,
- 4) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

Existing law requires any manufacturer seeking to have a firearm listed as being similar to an already listed firearm to provide the DOJ with the following:

- 1) The model designation of the listed firearm;
- 2) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns; and,
- 3) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

This bill requires that moving forward, all officers who are permitted to use off-roster or “unsafe handguns” in California must complete the full POST Basic Training Academy.

This bill requires that exempted officers must requalify for firearms every six months.

This bill requires that all agencies who use off-roster firearms shall be listed with DOJ and DOJ shall be notified when off-roster firearms are transferred or sold.

This bill creates a misdemeanor punishment with up to a year in county jail if an officer transfers a firearm to someone off-roster. As well as up to a \$10,000 fine.

This bill requires DOJ notify sworn officers of the fact that it is unlawful for them to transfer off-roster firearms.

This bill clarifies that no one can manufacture an off-roster firearm.

This bill exempts the following agencies or sworn members of these entities that have satisfactorily completed the firearms portion of the basic training course prescribed by the Commission on Peace Officer Standards and Training (POST):

- 1) The California Horse Racing Board;
- 2) The State Department of Health Care services;
- 3) The State Department of Public Health;
- 4) The State Department of Social Services;
- 5) The Department of Toxic Substances Control;
- 6) The Office of Statewide Health Planning and Development;
- 7) The Public Employees Retirement System;
- 8) The Department of Housing and Community Development;
- 9) Investigators of the Department of Business Oversight;
- 10) The Law Enforcement Branch of the Office of Emergency Services;
- 11) The California State Lottery; and,
- 12) The Franchise Tax Board.

COMMENTS

1. Need for This Bill

Since Penal Code 32000's creation, a number of law enforcement and state agencies have been exempted from strictly purchasing on-roster handguns. However, there are a number of non-exempt agencies that continue to make handgun purchases only to find that the manufacturers of those handguns did not pay the annual fee to keep their handguns on the DOJ's roster. This results in law enforcement and state agencies unknowingly being out of compliance. This bill is needed to bring previously excluded agencies to parity with those already exempted. By doing so, law enforcement and state agencies will be able to use safety-tested, non-roster handguns and avoid costly re-purchases.

2. Recent Amendments Add Restrictions and Conditions to Law Enforcement

The recent amendments to the bill add restrictions to law enforcement who carry off-roster handguns that are not listed on the not unsafe handgun list. These restrictions will apply not only the agencies that this bill is adding to the list of agencies that are exempt from the prohibition on carrying these weapons, but all agencies that are on the list.

The amendments impose the following restrictions and conditions:

1. This bill will require that, beginning 2021 any law enforcement agency that wishes to be exempt must require its officers to complete the full POST Basic Training Academy in order to be able to carry an off-roster firearm.
2. Officers who carry off-roster firearms must requalify for firearms every 6-months.
3. DOJ must be informed of all off-roster firearms possessed by an agency and when those firearms are transferred.
4. Imposes a misdemeanor punishment of up to a year in county jail if an officer transfers a firearm to someone off-roster. As well as up to a \$10,000 fine.
5. Require DOJ notify sworn officers of the fact that it is unlawful for them to transfer off-roster firearms.
6. Clarify that no one can manufacture an off-roster firearm.

3. Unsafe Handgun Law

SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

- 1) *Required Safety Device:* The Safe Handgun Law requires a revolver to have a safety device that, either automatically in the case of a double-action firing mechanism or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.
- 2) *Firing Test:* In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.
- 3) *Drop Test:* The Safe Handgun Law provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed

case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer.

SB 489 (Scott), Chapter 500, Statutes of 2003, added to the unsafe handgun law requirements for semiautomatic pistols that became effective in 2006 and 2007. The legislation requires that for a new semiautomatic center-fire pistol firearm to be added to the roster it has to be equipped with a chamber load indicator¹ and a magazine disconnect² (if it has a detachable magazine). The legislation also requires that all semiautomatic rimfire pistols, with a detachable magazine, have a magazine disconnect. All firearms that were on the not unsafe handgun list prior to the effective dates were essentially grandfathered in. Those who supported SB 489 argued:

It is just common sense that handgun should include a chamber load indicator that makes it clear whether the weapon is loaded. Since cheap disposable cameras can clearly count down the number of pictures left, it is inexcusable that handguns do not indicate when a bullet is in the chamber. Magazine safety disconnects would also greatly reduce the number of unintentional accidental shootings by ensuring that when the magazine is removed the gun will not fire.

(http://leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-500/sb_489_cfa_20030630_103204_asm_comm.html.)

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added “microstamping” as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010, “provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.” As discussed above, the Department of Justice issued the certification on May 17, 2013. Like the other provisions, the “microstamping” requirement did not apply to firearms already on the roster. The author of AB 1471 provided the rationale for the additional requirement,

AB 1471 will help law enforcement identify and apprehend armed gang members before they inflict more harm on others, including innocent bystanders. In instances of drive-by shootings, where the only evidence at the crime scene may be a spent cartridge case, law enforcement could quickly obtain a critical lead.

(http://leginfo.ca.gov/pub/07-08/bill/asm/ab_1451-1500/ab_1471_cfa_20070625_130933_sen_comm.html.)

Current law exempts handguns from the safety testing requirements that are sold to, or purchased by, the Department of Justice, any police department, any sheriff’s official, any marshal’s office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney’s office, or the military. Sworn members of those agencies are also exempted from the ban on buying or selling handguns that are not on DOJ’s “not unsafe” handgun roster. The law,

¹ A chamber load indicator is a device that plainly indicates that a cartridge is in the firing chamber. (Penal Code § 16380.)

² A magazine disconnect is a mechanism that prevents a semiautomatic pistol from operating when a detachable magazine is not inserted in the semiautomatic pistol. (Penal Code § 16900.)

additionally, allows sworn members of these agencies to sell an off-roster handgun to someone who is not exempt.

Until recently, a number of law enforcement agencies, and officers, have been able to purchase off-roster firearms. There was, evidently, some confusion among dealers as to who qualifies for the roster exemptions. When this was discovered by DOJ, the dealers were issued cited and DOJ reminded the dealers that only listed law enforcement agencies are allowed to purchase off-roster firearms. DOJ, additionally, added the following to their website:

The following agencies may purchase non-roster firearms for use in the discharge of their official duties:

Department of Justice

A police department

A sheriff's official

A marshal's office

The Department of Corrections and Rehabilitation

The California Highway Patrol

Any district attorney's office

Any federal law enforcement agency

The military or naval forces of this state or of the United States (Pen. Code, § 32000, subd. (b)(4).)

Penal Code section 32000 does not prohibit the sale to, or purchase by, sworn members of the above agencies of a handgun.

(<http://oag.ca.gov/firearms/exemptpo>.)

4. Failure to Pay a Fee may Result in a Weapon Being Deemed "Unsafe"

DOJ deems some weapons to be "unsafe" because a particular gun manufacturer has not paid the appropriate fees and/or submitted the proper paperwork. The weapons themselves may be "safe" under the standards listed above, and perfectly capable of passing all three firing tests, but they are deemed "unsafe" for purposes of categorization. Many law enforcement agencies still use these weapons and there are numerous exemptions to the "unsafe" handgun law that allows those agencies to continue to use and possess them. This bill will add additional agencies to the exemptions list in order to avoid the cost of replacing firearms that are technically considered "unsafe" despite being capable of complying with the firing tests.

5. Argument in Support

According to the California Statewide Law Enforcement Association:

AB 2699 will extend the exemption provided in Penal Code §32000 to peace officers serving and protecting communities throughout California, and who have completed the requisite firearms training and currently carry non-roster firearms.

In 2001, Penal Code §32000 created a list of non-exempt agencies who may purchase non-roster firearms for use in the discharge of their official duties. Questionably, certain trained peace officers and law enforcement personnel

were left off the list. These peace officers are often required to participate in mutual aid situations, task forces, sting operations and arrests. These high-risk situations require that these officers be properly armed.

In years past the Department of Justice permitted these agencies and departments to acquire these firearms for their public safety personnel. However, recent enforcement of the gun roster by the Department of Justice would require thousands of law enforcement to forfeit their guns. This legislation is necessary because it will allow officers, who have gone through the appropriate training to carry and keep their ‘non-roster’ handguns, while on active duty. Thereby also not creating a new expense for the State to repurchase new firearms and to retrain these personnel on these new firearms. In particular, this bill will expand the unsafe handgun exemption to sworn officers within various state departments, including the California Horse Racing Board, the State Department of Public Health, the Department of Toxic Substances Control, Investigators at the Department of Business Oversight, and others whom have the necessary training to carry these particular handguns.

6. Argument in Opposition

In opposition to the prior version of the bill, Women Against Gun Violence state:

AB 2699 would expand these exemptions and allow additional categories of people to obtain unsafe handguns. This would endanger the public. The bill is unnecessary because the additional categories of law enforcement officers have many safer models of handguns available to them.

Officers frequently take their service weapons home and, in some cases, fail to lock them away. Expanding the exemptions to many more California government employees would put far more handguns without prominent loaded chamber indicators and magazine disconnect safety devices into the homes of many more Californians, causing more deaths and injuries, and increasing liability.

There are many instances of even highly trained law enforcement officers being unaware that a round remains in the chamber of a pistol that lacks a loaded chamber indicator and unintentionally shooting someone. Some models of unsafe handguns lack manual safeties. Unsafe gun designs help cause many unintentional firearm injuries and deaths. For example, unintentional injuries called “Glock leg” are common.

There have also been a number of instances where firearms originally sold to law enforcement were, in turn, re-sold or transferred to civilians. In addition, the number of law enforcement handguns have been stolen or in other ways have gotten into civilian hands keeps increasing. Not only are these firearms a risk to public safety, they are also a public relations nightmare for law enforcement.

