
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 893 **Hearing Date:** June 11, 2019
Author: Gloria
Version: May 15, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *22nd District Agricultural Association: Firearm and Ammunition Sales at the Del Mar Fairgrounds*

HISTORY

Source: NeverAgainCA

Prior Legislation: SB 221 (Wiener), 2017, vetoed
SB 475 (Leno), 2013, vetoed
SB 585 (Leno), 2009, vetoed
AB 2948 (Leno), 2008, failed passage on the Senate Floor
SB 1733 (Speier), 2004, failed passage on the Assembly Floor
AB 295 (Corbett), Ch. 247, Stats. of 1999
AB 1107 (Ortiz), 1997, failed passage in Assembly Appropriations

Support: Bay Area Student Activists; City of Del Mar; City of Encinitas; City of Solana Beach; League of Women Voters; San Diegans for Gun Violence Prevention

Opposition: California Rifle and Pistol Association; California Sportsman's Lobby; Crossroads of the West; Firearms Policy Coalition; Gun Owners of California; National Rifle Association; National Shooting Sports Foundation; Outdoor Sportsmen's Coalition of California; Safari Club International; Safari Club International Foundation; Western Fairs Association

Assembly Floor Vote: 52 - 22

PURPOSE

This bill prohibits, as of January 1, 2021, the sale of firearms and ammunitions at the Del Mar Fairgrounds in the County of San Diego, the City of Del Mar, the City of San Diego and thereby creates a misdemeanor offense for a violation of that prohibition.

Existing law divides the state in agricultural districts and designates District 22 as San Diego County. (Food and Agr., §§ 3851, 3873.)

Existing law allows for the establishment of District Agricultural Associations within each agricultural district, for the purposes of holding fairs, expositions and exhibitions, and constructing, maintaining, and operating recreational and cultural facilities of general public interest. (Food & Agr. Code, § 3951.)

Existing law provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)

Existing law prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

Existing law excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

Existing law permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

Existing law states that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

Existing law states that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)

Existing law specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)

Existing law specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

This bill prohibits any officer, employee, operator, or lessee of the 22nd District Agricultural Association, as defined, from authorizing, or allowing the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds in the County of San Diego the City of Del Mar, the City of San Diego; or any successor or additional property owned, leased, or otherwise occupied or operated by the district.

This bill provides that the term "ammunition" includes assembled ammunition for use in a firearm and components of ammunition, including smokeless and black powder, and any projectile capable of being fired from a firearm with deadly consequence.

This bill provides that the prohibition on firearms and ammunitions sales at the Del Mar Fairgrounds does not apply to gun buy-back events held by a law enforcement agency.

This bill states that this section will become operative on January 1, 2021.

COMMENTS

1. Need for This Bill

According to the author:

Gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.) Though violent criminals do not buy most of their guns directly from gun shows, gun shows are “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat regulated legal market to the shadowy, no-questions-asked illegal market.” (Center for American Progress, <http://www.americanprogress.org/issues/gunscrimereport/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.) A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows. (<https://www.gao.gov/assets/680/674570.pdf>). 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border states. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>) In September, the 22nd District Agricultural Board of Directors (fair board), which oversees the fairgrounds, voted to temporarily stop the gun shows until staff members develop a policy that could ban the sale and possession of firearms on the property.

Crossroads of West holds its shows at more than a dozen large locations in four western states, all on public or city-owned property. It stages the two-day gun show at the Del Mar Fairgrounds five times annually.

In January, Crossroads filed a lawsuit against the fair board for its decision. This bill should provide additional legal protection to the fair board for taking this important action to protect public safety.

3. Gun Shows

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sale, and trade firearms and fire-arms related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend.¹

According to the NRA’s Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.² However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are “the critical

¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/file/57506/download>.

² NRA-ILA, <https://www.nraila.org/get-the-facts/background-checks-nics>.

moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.”³

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows.⁴ 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from DOJ’s Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border-states.⁵

4. Gun Show Regulations in California

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor’s employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer’s willful failure to comply with the specified requirements. California’s strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., “*In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries*,” *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county’s authority. “Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes.” (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as Cow Palace.

5. Prior Attempts to Ban Gun Shows at the Cow Palace in the San Francisco Bay Area

There have been several legislative attempts to regulate gun shows at Cow Palace—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

³ Center for American Progress, <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.

⁴ <https://www.gao.gov/assets/680/674570.pdf>.

⁵ <https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.

Like this bill, SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace DAA to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would “set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace.” Unlike SB 585, this bill will not impair any of Cow Palace’s ongoing contracts because, if chaptered, it will not become operative until January 1, 2020.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, “I encourage all [DAAs] to work with their local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.” Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

Last session, SB 221 (Wiener) contained very similar provisions to this bill. SB 221 would have prohibited any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County. Like this bill, SB 221 had an implementation date in 2020 and exempted law enforcement firearm buy-back events. Unlike this bill, SB 221 failed to exempt existing contracts to host firearms events. SB 221 was vetoed by Governor Brown with the following veto message:

This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow Palace.

This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger.

The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.

6. Current State of Gun Shows at the Del Mar Fairgrounds

According to a Fairgrounds press release, last year the 22nd District Agricultural Association’s Board of Directors voted 8 to 1 to not consider any contracts with producers of gun shows beyond Dec. 31, 2018, until it has adopted a more thorough policy regarding the conduct of gun

shows.⁶ The policy is to be presented to the Board no later than December, 2019 and would:

- Consider the feasibility of conducting gun shows for only educational and safety training purposes and bans the possession of guns and ammunition on state property,
- Align gun show contract language with recent changes in state and federal law
- Detail an enhanced security plan for the conduct of future shows
- Propose a safety plan
- Consider the age appropriateness of such an event
- Grant rights for the DAA to perform an audit to ensure full compliance with California Penal Code Sections 171b and 12071.1 and 12071.4. These audit rights may be delegated at the discretion of the 22nd DAA. (*Id.*)

According to local reporting, the operator of the Del Mar Fairgrounds gun show has filed a lawsuit challenging the Board of Directors' decision on the grounds that it violates the U.S. Constitution's First Amendment guarantee to free expression.⁷

This bill would add a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill would effectively terminate the possibility for future gun shows at the Del Mar Fairgrounds.

7. Argument in Support

According to the *NeverAgainCA*:

NeverAgainCA organized large, peaceful protests at every gun show at the Del Mar Fairgrounds. attended and spoke at every meeting of the 22nd District Agricultural Association Board, and joined students protesting gun violence and gun shows at many area schools. NeverAgainCA presented resolutions calling for the elimination of the gun shows at the Del Mar Fairgrounds to the City Councils of the adjacent cities of Del Mar, Solana Beach and Encinitas; these resolutions were adopted and are part of the record of this hearing. Candidate and now Congressman Mike Levin addressed several of our rallies against the gun shows. At the request of NeverAGainCA, then Lt. Governor, now Governor, Gavin Newsom, called on the Fair Board to end gun shows and put an end to valuing the sale of firearms above the value of lives.

⁶ (Available at: http://www.delmarfairgrounds.com/index.php?fuseaction=about.press_details&newsid=1396[as of March 20, 2019].)

⁷ (Williams, *Lawsuit to hang up Del Mar Fairgrounds gun show policy recommendations*, Del Mar Times, March 15, 2019, available at: <https://www.delmartimes.net/news/sd-cm-nc-gun-show-20190315-htmlstory.html>, [as of March 20, 2019].)

NeverAgainCA is proud to support AB 893. The residents of the 78th AD and adjacent districts, and their elected representatives, have demonstrated the broad public support for ending gun shows at the Del Mar Fair Grounds on a permanent basis.

8. Argument in Opposition

According to the *California Rifle and Pistol Association, Inc.*:

Promoters and operators of gun shows in California must comply with no less than twenty-six sections of the penal code. Gun sales are highly-regulated in California and the rules are no less stringent for those vendors at gun shows (Refer Exhibit #2 attached). Vendors that participate in gun shows may not do so unless all their licenses have been submitted to the California Department of Justice before the event for the purposes of determining whether the vendors possess the proper valid licenses. If they do not pass the review of the California DOJ, they are prohibited from participating.

-- END --