
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 376 **Hearing Date:** April 2, 2019
Author: Portantino
Version: March 25, 2019
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Firearms: Transfers*

HISTORY

Source: California Department of Justice

Prior Legislation: AB 740 (Alejo) of 2013 - failed passage in Assembly Appropriations

Support: Bay Area Student Activists

Opposition: California Sportsman's Lobby; Outdoor Sportsmen's Coalition of California; Safari Club International; Safari Club International Foundation

PURPOSE

This bill updates California laws related to the transfer of firearms as follows: (1) specifies that "infrequent" firearms transfers refer to every type of firearm, not just handguns; (2) exempts gun buy-backs and trust beneficiaries from requirements of transferring firearms through a licensed dealer; (3) updates a number of provisions to exempt charity raffles; (4) lowers the production number from 100 to 50 for the requirement to register as a firearm manufacturer.

Existing federal law states that it shall be unlawful for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph: (18 U.S.C. 922(a)(3).)

- 1) Shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State;
- 2) Shall not apply to the transportation or receipt of a firearm obtained in conformity as specified; and
- 3) Shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter [effective Dec. 16, 1968];

Existing federal law states that it shall be unlawful for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to: [18 U.S.C. 922(a)(5)]

- 4) The transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence; and
- 5) The loan or rental of a firearm to any person for temporary use for lawful sporting purposes.

Existing federal law states that it shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance. (18 U.S.C. 922(b)(2).)

Existing state law defines "infrequent" for purposes of handgun transactions as less than six per calendar year. Defines "infrequent" for purposes of long gun sales as "occasional and without regularity." The term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events. Specifies that "transaction" means a single sale, lease, or transfer of any number of handguns. (Pen. Code § 16730.)

This bill would redefine "infrequent" to mean less than six firearm transactions per calendar year, regardless of the type of firearm, and no more than 50 total firearms within those transactions.

Existing law generally requires that firearms transfers go through a licensed firearms dealer. (Cal. Penal Code § 27545.)

This bill would also exempt from the requirement specified transfers made by a formerly licensed dealer that is ceasing operations, transfers made to a specified government entity as part of a "gun-buyback" program, and transfers made by a person prohibited from possessing a firearm to a dealer for the purpose of storing that firearm.

Existing law exempts from the requirement that transfers go through a licensed dealer requirement, the transfer of a firearm by bequest or intestate succession, or to a surviving spouse. (Cal. Pen. Code § 26500.)

This bill would extend that exemption to the transfer of a firearm to a trust beneficiary, as specified.

Existing law provides certain exemptions to prohibitions on openly carrying a firearm, storage of firearms, dealer processing requirements, and off-premises transactions by a licensed dealer, for specified charity auctions and similar events. (Cal. Pen. Code §§ 26384 & 26500.)

This bill would clarify that these exemptions also apply to charity raffles.

This bill would also remove the limitation on the number of firearm transactions allowed by a charity auction and instead require all firearms sold or otherwise transferred by auction or raffle to be delivered to a licensed dealer for delivery to the recipient.

Existing law requires a person manufacturing 100 or more firearms each year in the state to be licensed as a manufacturer. (Cal. Pen. Code § 29010.)

This bill would instead require anybody manufacturing 50 or more firearms to be licensed.

COMMENTS

1. Need for This Bill

According to the author:

SB 376 specifically modernizes the term “infrequent” to reflect the regulation of rifles and shotguns post 1990. It also puts in a global cap on the actual number of firearms where ownership is transferred a year or “leased” i.e. a loan for consideration where dealer licensure is required by the state.

SB 376 recognizes that a global cap may negatively impact various situations – including “one shot deals” such that exemptions are required. Some instances where a cap may have a negative impact without these exemptions include upon death, divorce, or a firearm prohibiting event such as a felony conviction.

Moreover, it alters through amendments almost all cross-references to the term “infrequent” to ensure there are appropriate exemptions. The amendments ensure legitimate activities can continue so long as the recording and background check processes are followed.

The need for uniformity across the types of firearms is clear. It affords individuals the ability and opportunity to judge their potential legal exposure and any liabilities. The lack of specificity is one of the reasons there are disputes at the federal level – coupled with the lack of secondary transaction controls – over who does and does not need a Federal Firearms License.

2. Firearms Transfers Must Generally be Conducted Through a Licensed Dealer

When both parties to a transaction are private parties, firearms transfers in California must be completed through a licensed California dealer. (Cal. Pen. Code § 27545.) To complete these transactions, the seller or transferor must provide the firearm to the dealer, who will deliver the firearm to the purchaser or transferee following a background check and expiration of the

mandatory state waiting period, unless the transferee is prohibited from purchasing or possessing firearms, or the dealer is otherwise notified by the California Department of Justice (“DOJ”) that the sale or transfer may not proceed. (Cal. Pen. Code §§ 28050(a)-(c).) If the dealer cannot deliver the firearm to the purchaser or transferee, the dealer must determine whether the private seller or transferor is prohibited from possessing a firearm. If the seller or transferor does not fall into a prohibited class, the dealer must immediately return the firearm to that party. In the event the seller or transferor does fall into a prohibited class, the dealer cannot return the firearm to that party, and must deliver the firearm to the sheriff of the county or to the chief of police of any city in the county in which the dealer operates.

The following sales and transfers are exempt from the requirement that they be processed through a licensed dealer:

- 1) Certain government-sponsored transfers, including gun buybacks;
- 2) Certain transfers to nonprofit historical societies, museums, or institutional collections;
- 3) Transfers to licensed firearms manufacturers and importers;
- 4) Infrequent transfers between immediate family members;
- 5) Certain loans involving firearms;
- 6) Donations made to non-profit auctions;
- 7) Transfers by operation of law; or
- 8) Certain transfers of curios or relics to licensed firearms collectors.

3. Infrequent Firearms Transfers

A number of concerns have been raised as to the State’s ability under current state code to regulate the activities of California residents going outside of California, acquiring ownership of normal rifles, shotguns, and handguns, and then physically bringing them back into the state.

It is agreed that this importation conduct violates current federal law, but there are ambiguities as to the state’s jurisdictional authority. Federal law in essence mandates “direct ship,” which means that guns can be acquired outside of the state, but, to be possessed and received in-state, the transaction has to be brokered through a federal firearms licensee [who in California also has to be state licensed] for pickup in accordance with California law. That includes background checks, the waiting period, registration, etc. This mandate, stemming from 18 U.S.C. 922(a)(3), (a)(5), and (b)(2), creates certain procedures for bringing firearms across state lines and makes certain firearm transactions illegal.

Moreover, under current law, it is unclear if importation into the state, or transportation of guns into the state, to illegally dispose of the same are covered by current Pen. Code § 27515 or Pen. Code § 27520. Finally, it is unclear whether it is a state crime for a person to receive a gun from a state licensed gun dealer when that person knows or has reason to know that the transaction is not legitimate.

In addition to these concerns, under current code, the definition of 'infrequent,' as it relates to firearms transactions, is ambiguous and inconsistent; and, the reporting by the courts to the Department of Justice of persons adjudicated as mentally unfit to own, possess, or control a firearm needs to be expedited.

SB 376 conforms the definition of 'infrequent' on handguns and long guns to be consistent.

4. Argument in Support

According to the Bay Area Student Activists:

Currently, all firearms transfers must be conducted through a licensed firearms dealer. One notable exception to this law makes allowances for “infrequent sales, leases, and transfers.” However, “infrequent: is defined differently for handguns as opposed to long guns. As the exemption applies to handguns, “infrequent” means less than six transfers not conducted through a firearms dealer. Yet, as it applies to long guns, the definition of “infrequent” is much more vague: an unlimited number of transfers are permitted as long as they are “occasional and without regularity.” This bill would simply clean up this language and make the current handgun definition of “infrequent applicable to all firearms.

5. Argument in Opposition

According to the California Sportsman’s Lobby:

The bill would unnecessarily limit to less than six the number of firearms sales transactions a sportsman or other lawful individual could engage in per year. Currently less than six transactions per year is the cap for handguns and, for rifles and shotguns, it is specified as “infrequent” (occasional and without regularity). All private party transactions are processed through a properly licensed dealer, and there is a ten-day waiting period before a sale or transfer can be completed during which time the Department of Justice conducts a criminal and mental history background check to determine if the prospective buyer/transferee is eligible to possess a firearm. Sportsmen and others occasionally (and without regularity) engage in private party firearms transactions through licensed firearms dealers in order to upgrade the quality of their firearms or to make other changes that would improve the enjoyment of their outdoor experience.

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