
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 566 **Hearing Date:** April 14, 2015
Author: Bates
Version: February 26, 2015
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Firearms Safety Certificate*

HISTORY

Source: Author

Prior Legislation: SB 683 (Block)—2013, Chap. 761, Stats. 2013
SB 1422 (Anderson)—2012, held in Senate Appropriations
SB 404 (Anderson) – 2011, died in Senate Public Safety
AB 2609 (Anderson) – 2010, failed passage in Assembly Public Safety
AB 2152 (Neilson) – 2010, failed passage in Assembly Public Safety
AB 201 (Samuelian) – 2004, failed passage in Assembly Public Safety
AB 2081 (Briggs) – 2002, failed passage in Assembly Public Safety
SB 1615 (Johannessen) – 2002, died in Senate Public Safety
SB 52 (Scott) – Chap. 942, Stats. 2001
SB 731 (Thompson) – Chap. 6, Stats. 1992

Support: American Legion-Department of California; AMVETS-Department of California; California Associate of County Veterans Services Officers; California Rifle and Pistol Association, Inc.; Gun Owners of California; Military Officers Association-California Council of Chapters; Veterans of Foreign Wars-Department of California; Vietnam Veterans of America-California State Council

Opposition: The California Chapters of the Brady Campaign to Prevent Gun Violence; Law Center to Prevent Gun Violence

PURPOSE

The purpose of this bill is to expand the exemption from the firearm safety certificate requirement that currently applies to any active or honorably retired member of the military, as specified, to include any honorably discharged member of the military, as specified.

Existing law provides that no person shall do either of the following:

- Purchase or receive any firearm, except an antique firearm, without a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.
- Sell, deliver, loan, or transfer any firearm, except an antique firearm, to any person who does not have a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.

Any person who violates either of these provisions is guilty of a misdemeanor, punishable by up to 6 months in county jail, a fine of up to \$1,000, or both.

(Penal Code § 31615.)

Existing law requires the license applicant to complete and pass a written test prescribed by the Department of Justice (DOJ) and administered by an instructor certified by DOJ. The test shall include:

- The laws applicable to carrying and handling firearms, particularly handguns;
- The responsibilities of ownership of firearms, particularly handguns;
- Current law as it relates to the sale and transfer of firearms laws;
- Current law as it relates to the permissible use of lethal force;
- What constitutes safe firearm storage;
- Risks associated with bringing firearms into the home; and,
- Prevention strategies to address issues associated with bringing firearms into the home.

(Penal Code § 31640.)

Existing law states that an applicant for a firearm safety certificate who successfully passes the test, with a passing grade of at least 75 percent, shall immediately be issued a firearm safety certificate by the instructor. (Penal Code § 31645.)

Under existing law a certified instructor may charge a fee of twenty-five dollars for the firearms safety certificate, fifteen dollars of which must be paid to DOJ. (Penal Code § 31650.)

Existing law provides that DOJ is required to develop firearm safety certificates to be issued by certified instructors to those persons who have complied with specified requirements. A firearm safety certificate shall include, but not be limited to, the following information:

- A unique firearm safety certificate identification number;
- The holder's full name;
- The holder's date of birth;
- The holder's driver's license or identification number;
- The holder's signature;
- The signature of the issuing instructor; and,
- The date of issuance.

The firearm safety certificate expires five years after the date that it was issued by the certified instructor. (Penal Code § 31655.)

Existing law exempts the following persons from having to obtain a firearm safety certificate in order to purchase a firearm:

- Any active or honorably retired peace officer;
- Any active or honorably retired federal officer or law enforcement agent;
- Any reserve peace officer;

- Any person who has successfully completed the course of training specified in Section 832;
- A licensed firearms dealer, who is acting in the course and scope of that person's licensed activities, as specified;
- A federally licensed collector who is acquiring or being loaned a firearm that is a curio or relic, who has a current certificate of eligibility issued by DOJ;
- A person to whom a firearm is being returned, where the person receiving the firearm is the owner of the firearm;
- A family member of a peace officer or deputy sheriff from a local agency, as specified;
- Any individual who has a valid concealed weapons permit;
- An active or honorably retired member of the United States Armed Forces, the National Guard, the Air National Guard, or the active reserve components of the United States, where individuals in those organizations are properly identified;
- Any person who is authorized to carry loaded firearms, as specified; and,
- Persons who are the holders of a special weapons permit issued by DOJ.

(Penal Code § 31700(a).)

Existing law exempts a person who takes title or possession of a firearm by operation of law in a representative capacity from the firearm safety certificate requirements. (Penal Code § 31700(b).)

Existing law states that a person, validly identified, who has been issued a valid hunting license that is unexpired or that was issued for the hunting season immediately preceding the calendar year in which the person takes title of possession of a firearm is exempt from the firearm safety certificate requirement, except as to handguns. (Penal Code § 31700(c).)

This bill would expand the exemption from the firearm safety certificate requirement that currently applies to any active or honorably *retired* member of the military, as specified, to include any honorably *discharged* member of the military, as specified.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 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).

While significant gains have been made in reducing the prison population, the state now 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. Need for This Legislation

According to the Author:

California is home to the largest number of veterans, with nearly 2 million living here. Some veterans are discharged from the service for a wide range of reasons. “Honorably discharged veterans” have the highest form of discharge from the service. This means that a veteran has separated from the military with honor and they have met or exceeded the standards of duty, performance, and personal conduct.

Effective January 1, 2015, SB 683 (Block, 2013) went into effect. This measure replaced the Handgun Safety Certificate program with the Firearm Safety Certificate (FSC) program. The FSC program not only applies to the purchase of handguns, but now applies to the purchase of all firearms (handguns and long guns), unless one falls under the list of current exemptions. For hand gun purchases with a valid certificate, handguns may still be purchased until the certificate expires. Long guns purchased after the first of this year will now require a FSC.

The FSC program requires a simple, multiple choice test on general firearm safety. Veterans have already received many hours of firearm safety training. Most firearms dealerships have the capability to give this test on-site and it normally doesn't take more than a few minutes to complete. This certificate does NOT bypass an individual from being subject to the full background check and waiting period required by law.

According to the Attorney General's website, there are seventeen exemptions from the FSC requirement, 3 of which are specific to members of the military. Active duty, reserve or honorably retired veterans are entitled to receive this exemption and therefore do not have to obtain a FSC in order to purchase a new gun. For no known reason, honorably discharged members of the United States military were left off the list of exemptions for veterans.

Given the exemptions that are currently in effect for the FSC program, it only makes sense to expand the exemptions to include honorably discharged veterans. It is important to note that SB 566 by no means exempts any individual from still having to go through the ENTIRE background check to purchase a firearm. Full backgrounds will still take place at any licensed dealer for any individual seeking to purchase a firearm. SB 566 simply seeks to include these honorably discharged veterans under the same exemption already allowed for active duty, reserve, or honorably retired veterans.

2. History of SB 52 – Military Exemption

The law prior to 2001 exempted all honorably discharged veterans from obtaining a Basic Firearms Safety Certificate and under the new Handgun Safety Licensing Program, enacted by SB 52, that exemption was narrowed to include only honorably *retired* veterans.¹ Legislative history indicates that narrowing of the exemption was deliberate.

SB 52 (Scott), Chapter 942, Statutes of 2001, repealed the Basic Firearms Safety and Certificate Program and replaced that program with the more stringent Handgun Safety Licensing Program. SB 52 provided that, effective January 1, 2003, no person may purchase, transfer, receive, or sell a handgun without a Handgun Safety Certificate (HSC). As introduced, SB 52 contained no exemption for retired *or* discharged veterans. SB 52 was amended April 5, 2001 to include an exemption to the HSC requirement for active military and military reserve personnel. SB 52 was amended again on June 4, 2001 and added honorably *retired* members of the military to the military exemption provision. The much broader category of all honorably *discharged* members of the military was never included in the military exemption contained in SB 52.

WAS THE NARROWING OF THE VETERANS EXEMPTION FROM THE HANDGUN SAFETY LICENSING PROGRAM INTENTIONAL?

3. Does Military Service Obviate the Need for a Firearm Safety Certificate?

All firearms purchasers in California, with limited exception, are required to complete and pass a written test prescribed by the DOJ and administered by an instructor certified by DOJ. The test must include:

¹ Senate Bill 683 (Block, of 2013) extended to the handgun safety certificate requirements to all firearms.

- The laws applicable to carrying and handling firearms, particularly handguns;
- The responsibilities of ownership of firearms, particularly handguns;

- Current law as it relates to the sale and transfer of firearms laws;
- Current law as it relates to the permissible use of lethal force;
- What constitutes safe firearm storage;
- Risks associated with bringing firearms into the home; and,
- Prevention strategies to address issues associated with bringing firearms into the home.

(Penal Code § 31640.)

As required by the Penal Code, DOJ includes questions about California firearm laws. Sample questions taken from the Firearm Safety Certificate Study Guide include:

To legally give a firearm to your best friend as a birthday gift, you must complete the transfer of the firearm through a licensed firearms dealer.

True [or] False

It is illegal to lend a firearm to a minor without the permission of the minor's parent or legal guardian.

True [or] False

(<http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/hscsg.pdf>)

While members of the military are trained in the use of firearms, members may wish to consider whether that training could reasonably be expected to include the same subjects covered in firearms safety certificate testing.

DOES MILITARY TRAINING IN THE USE OF FIREARMS INCLUDE THE SAME SUBJECTS AS CALIFORNIA'S FIREARM SAFETY CERTIFICATE TESTING?

4. Prior Legislation

SB 404 (Anderson) of the 2011-2012 Legislative Session, similarly would have exempted honorably discharged veterans from having to obtain a HSC in order to purchase a handgun. SB 404 was not heard by the Senate Public Safety Committee.

AB 2152 (Nielsen) of the 2009-2010 Legislative Session, similarly would have exempted honorably discharged veterans from having to obtain a HSC in order to purchase a handgun. AB 201 failed passage in the Assembly Public Safety Committee.

AB 2609 (Anderson), of the 2009-2010 Legislative Session, similarly would have exempted honorably discharged veterans from having to obtain a HSC in order to purchase a handgun. AB 201 failed passage in the Assembly Public Safety Committee.

AB 201 (Samuelian), of the 2003-2004 Legislative Session, similarly would have exempted honorably discharged veterans from having to obtain a HSC in order to purchase a handgun. AB 201 failed passage in the Assembly Public Safety Committee.

AB 2081 (Briggs), of the 2001-2002 Legislative Session, similarly would have exempted honorably discharged veterans from having to obtain a HSC in order to purchase a handgun. AB 2081 failed passage in the Assembly Public Safety Committee.

SB 1615 (Johannessen), of the 2001-2002 Legislative Session, would have similarly exempted honorably discharged veterans from having to obtain a HSC in order to purchase a handgun. SB 1615 was not heard by the Senate Public Safety Committee.

5. Argument in Opposition

The California Chapters of the Brady Campaign to Prevent Gun Violence state:

Currently, active duty military and retired military personnel are exempt from obtaining a Firearm Safety Certificate. Senate Bill 566 would further exempt honorably discharged veterans from the Firearm Safety Certificate requirement. An essentially identical bill relating to the former Handgun Safety Certificate was introduced in 2011 by Senator Joel Anderson as SB 404. That bill failed passage in the Senate Public Safety Committee. Similar bills were also introduced in the Assembly in 2010 by then Assembly Members Anderson (AB 2609) and Nielsen (AB 2152). Both of these bills also failed in the Assembly Public Safety Committee.

The presumed rationale for SB 566 is that veterans receive firearms training in the military and therefore the material covered by the Firearm Safety Certificate would be redundant. Military training, however, does not cover the subject areas listed above and therefore does not substitute for a Firearm Safety Certificate. Further, many who serve in the military do not occupy positions that require the handling and use of firearms. To exempt a veteran from the Firearm Safety Certificate would be the same as exempting a veteran from having to obtain a driver's license on the grounds that they once drove motor vehicles while in the military.

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