

Senate Bill No. 427

Passed the Senate September 8, 2011

Secretary of the Senate

Passed the Assembly September 7, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 3479 of the Civil Code, and to amend Sections 16650, 30312, 30352, 30355, 30357, 30362, and 30365 of the Penal Code, relating to ammunition and firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 427, De León. Ammunition and firearms.

(1) Existing law authorizes issuance of an injunction prohibiting specified criminal gang activity for purposes of abating a nuisance.

This bill would require the court issuing an injunction against gang activity, as specified, to state on the record whether any or all of the defendants are enjoined from possessing a firearm as a term of the injunction.

(2) Existing law defines “handgun ammunition” for most purposes as ammunition principally for use in handguns, notwithstanding that the ammunition may also be used in some rifles.

This bill would delete the phrase “principally” from that definition and recast the definition of handgun ammunition to mean ammunition capable of being used in pistols, revolvers, and other firearms, capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles. Further, the bill would define “handgun ammunition” for the purposes of delivery or transfer of handgun ammunition and for the purposes of specified provisions related to handgun ammunition vendors as any variety of ammunition of a specified caliber, notwithstanding that the ammunition may also be used by some rifles.

(3) Existing law prohibits a vendor from selling or otherwise transferring ownership of any handgun ammunition without, at the time of delivery, legibly recording specified information regarding the purchaser or transferee, and maintaining the record for a period of not less than 5 years, as specified. Existing law provides that violation of these provisions is a misdemeanor. Existing law also provides that the records shall be subject to inspection by any peace officer and certain others, as specified, for purposes of an investigation where access to those records is

or may be relevant to that investigation, when seeking information about persons prohibited from owning a firearm or ammunition, or when engaged in ensuring compliance with laws pertaining to firearms or ammunition, as specified.

This bill would require that the information described above in connection with the transfer of handgun ammunition be legibly or electronically recorded. The bill would provide that commencing February 1, 2012, except for investigatory and enforcement purposes described above, no ammunition vendor shall provide the information described above to any 3rd party without the written consent of the purchaser or transferee and would require the records to be maintained in a manner that protects the privacy of the purchaser or transferee who is the subject of the record. The bill would also permit records containing that information to be copied for investigatory or enforcement purposes by any person authorized to inspect those records, as specified. The bill would provide that anyone who uses, copies, or discloses any of the information for any purpose that is unauthorized by these provisions is guilty of a misdemeanor. Any required ammunition records that are no longer required to be maintained would be destroyed in a manner that protects the privacy of the purchaser or transferee who is the subject of the record. The bill would provide that violation of these provisions is a misdemeanor.

By creating new crimes, and by expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The bill would require ammunition vendors, commencing February 1, 2012, to provide written notice to the local police chief, or if the vendor is in an unincorporated area, to the county sheriff, of the vendor's intent to conduct business in the jurisdiction, and to obtain any regulatory or business license required by the jurisdiction for ammunition sellers.

(4) Existing law provides that the delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face transaction with the deliverer or transferor being provided bona fide evidence of identity from the purchaser or other transferee.

This bill would also provide that handgun ammunition may be purchased over the Internet or through other means of remote ordering if a handgun ammunition vendor in California initially receives the ammunition and processes the transfer, as specified.

(5) Existing law provides that a handgun ammunition vendor shall not permit any employee who the vendor knows or reasonably should know is a person prohibited from possessing firearms, as specified, to handle, sell, or deliver handgun ammunition in the course and scope of employment. Existing law also provides that a handgun ammunition vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any handgun ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor. Existing law, operative January 1, 2012, provides that specified records of handgun ammunition transfers created by handgun ammunition vendors shall be subject to inspection by a peace officer district attorney or by an employee of the Department of Justice, as specified.

This bill would make a violation of these provisions a misdemeanor.

By creating new crimes, this bill would impose a state-mandated local program.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 3479 of the Civil Code is amended to read:

3479. (a) Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

(b) In every case in which a court orders an injunction pursuant to this section to abate a nuisance related to gang activity, the court

shall state on the record whether any or all defendants shall be enjoined from possessing a firearm as a term of the injunction.

SEC. 2. Section 16650 of the Penal Code is amended to read:

16650. (a) As used in this part, “handgun ammunition” means ammunition capable of being used in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles.

(b) Notwithstanding subdivision (a), for purposes of Section 30312 and Article 3 (commencing with Section 30345) of Chapter 1 of Division 10 of Title 4, “handgun ammunition,” means any variety of ammunition in the following calibers, notwithstanding that the ammunition may also be used in some rifles:

- (1) .22 rimfire, .22 Long Rifle also known as .22 LR.
- (2) .25, .25 Automatic Colt Pistol also known as .25 ACP, .25 Auto, .25 Automatic.
- (3) .32, .32 Automatic Colt also known as .32 ACP, .32 Automatic, .32 Auto.
- (4) .357, .357 Magnum also known as .357 S&W Magnum.
- (5) .38, .38 Special also known as .38 Special +P, .38-44 High Velocity, .38 Smith & Wesson Special, .380 Automatic Colt Pistol also known as .380 ACP, .380 Auto.
- (6) .40, .40 Smith & Wesson also known as .40 S&W.
- (7) .44, .44 Remington Magnum also known as .44 Magnum, .44 Smith & Wesson Special also known as .44 Special, .44 S&W Special.
- (8) .45, .45 Automatic Colt Pistol also known as .45 ACP, .45 Auto, .45 Automatic.
- (9) 5.7x28mm.
- (10) 6.35mm.
- (11) 7.65mm, 7.65mm Browning.
- (12) 9mm, 9mm Luger also known as 9mm Parabellum, 9mm Para, 9mm Kurz, 9mm Browning short, 9x17mm, 9mmx19, 9x19mm.
- (13) 10mm, 10mm Automatic also known as 10mm Auto, Bren Ten.

(c) If a cartridge is named or listed in subdivision (b), any variation of that cartridge type is included for purposes of subdivision (b), including variations in bullet weight, bullet type, and notations regarding powder such as “+P.” If the cartridge is

listed in subdivision (b), a cartridge that is depicted in writing, such as on the box of ammunition, with a decimal or without a decimal, the cartridge is listed for purposes of subdivision (b).

(d) As used in Section 30312 and in Article 3 (commencing with Section 30345) of Chapter 1 of Division 10 of Title 4, “handgun ammunition” does not include either of the following:

(1) Except for .22 rimfire and .22 Long Rifle also known as .22 LR, ammunition designed and intended to be used in an antique firearm, as defined in Section 921(a)(16) of Title 18 of the United States Code.

(2) Blanks.

SEC. 3. Section 30312 of the Penal Code is amended to read:

30312. (a) The delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face transaction with the deliverer or transferor being provided bona fide evidence of identity from the purchaser or other transferee, provided, however, that handgun ammunition may be purchased over the Internet or through other means of remote ordering if a handgun ammunition vendor in California initially receives the ammunition and processes the transfer in compliance with this section and Article 3 (commencing with Section 30345) of Chapter 1 of Division 10 of Title 4 of Part 6.

(b) Subdivision (a) shall not apply to or affect the sale, delivery, or transfer of handgun ammunition to any of the following:

(1) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale, delivery, or transfer is for exclusive use by that government agency and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency employing the purchaser or transferee is obtained, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency employing the individual.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of the officer’s duties.

(3) An importer or manufacturer of handgun ammunition or firearms who is licensed to engage in business pursuant to Chapter

44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

(5) A person whose licensed premises are outside this state and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(6) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710.

(7) A handgun ammunition vendor.

(8) A consultant-evaluator.

(c) A violation of this section is a misdemeanor.

SEC. 4. Section 30352 of the Penal Code is amended to read:

30352. (a) A vendor shall not sell or otherwise transfer ownership of any handgun ammunition without, at the time of delivery, legibly or electronically recording the following information:

(1) The date of the sale or other transaction.

(2) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.

(3) The brand, type, and amount of ammunition sold or otherwise transferred.

(4) The purchaser's or transferee's signature.

(5) The name of the salesperson who processed the sale or other transaction.

(6) The right thumbprint of the purchaser or transferee on the above form.

(7) The purchaser's or transferee's full residential address and telephone number.

(8) The purchaser's or transferee's date of birth.

(b) Subdivision (a) shall not apply to or affect sales or other transfers of ownership of handgun ammunition by handgun ammunition vendors to any of the following, if properly identified:

(1) A person licensed pursuant to Sections 26700 to 26915, inclusive.

(2) A handgun ammunition vendor.

(3) A person who is on the centralized list maintained by the department pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

(4) A target facility that holds a business or regulatory license.

(5) A gunsmith.

(6) A wholesaler.

(7) A manufacturer or importer of firearms licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(8) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer of ownership is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed.

SEC. 5. Section 30355 of the Penal Code is amended to read:

30355. The records required by this article shall be maintained on the premises of the vendor for a period of not less than five years from the date of the recorded transfer. Commencing February 1, 2012, except for the purposes set forth in Section 30357, no vendor shall provide the information specified in subdivision (a) of Section 30352 to any third party without the written consent of the purchaser or transferee, and all records shall be maintained in a manner that protects the privacy of the purchaser or transferee who is the subject of the record. Anyone who uses, copies, or discloses any of the information contained in the records for any purpose that is not authorized by this article shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment. Any records

required by this section that are no longer required to be maintained shall be destroyed in a manner that protects the privacy of the purchaser or transferee who is the subject of the record.

SEC. 6. Section 30357 of the Penal Code is amended to read:

30357. (a) The records referred to in Section 30352 shall be subject to inspection at any time during normal business hours by any peace officer employed by a sheriff, city police department, or district attorney as provided in subdivision (a) of Section 830.1, or employed by the department as provided in subdivision (b) of Section 830.1, provided that the officer is conducting an investigation where access to those records is or may be relevant, is seeking information about persons prohibited from owning a firearm or ammunition, or is engaged in ensuring compliance with the Dangerous Weapons Control Law, as defined in Section 23500, or any other laws pertaining to firearms or ammunition.

(b) The records referred to in Section 30352 shall also be subject to inspection at any time during normal business hours by any other employee of the department, provided that the employee is conducting an investigation where access to those records is or may be relevant, is seeking information about persons prohibited from owning a firearm or ammunition, or is engaged in ensuring compliance with the Dangerous Weapons Control Law, as defined in Section 23500, or any other laws pertaining to firearms or ammunition. Records may be copied for investigatory or enforcement purposes by any person authorized to inspect those records pursuant to this section.

SEC. 7. Section 30362 of the Penal Code is amended to read:

30362. (a) No vendor shall, during any inspection conducted pursuant to this article, refuse to permit a person authorized under Section 30357 to examine any record prepared in accordance with this article.

(b) No vendor shall refuse to permit the use of any record or information by a person authorized under Section 30357.

(c) Commencing February 1, 2012, a vendor shall provide written notice to the local police chief, or if the vendor is in an unincorporated area, to the county sheriff, of the vendor's intent to conduct business in the jurisdiction, and shall obtain any regulatory or business license required by the jurisdiction for ammunition sellers.

SEC. 8. Section 30365 of the Penal Code is amended to read:

30365. (a) A violation of Section 30347, 30350, 30352, 30355, 30357, 30360, or 30362 is a misdemeanor.

(b) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2011

Governor