

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 12, 2016

SENATE BILL

No. 1332

Introduced by Senator Mendoza

February 19, 2016

An act to amend Sections ~~11106, 17060, and 27880 of, 11106 and 17060 of, and~~ to add Sections 27881 and 27882 to, ~~and to add and repeal Section 11106.5 of,~~ the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1332, as amended, Mendoza. Firearms.

Existing law requires the Attorney General to maintain a registry of all firearm owners consisting of the name, address, identification of, place of birth, complete telephone number, occupation, sex, description, and all legal names and aliases used by the owner of a particular firearm as listed on the Dealer's Record of Sale or other specified reports.

This bill ~~would~~ *would, commencing January 1, 2019,* require the Department of Justice to modify its registration form so that both spouses or both domestic partners may register as the owners of the firearm and would require the department to maintain both names on the firearms registry. ~~The bill would make related findings and declarations and would require the Attorney General to submit a report to the Legislature on or before January 1, 2018, regarding joint registration of firearms, as specified.~~

Existing law also requires the Attorney General to maintain information regarding firearms from certain other reports pertaining to firearms transactions.

This bill would additionally require the Attorney General to maintain the information supplied to the Department of Justice in certain forms

submitted by persons who take possession of a firearm pursuant to a specified exception to the general requirement that firearms transactions be completed through a licensed firearms dealer.

Existing law requires the loan of a firearm to be conducted through a licensed firearms dealer. ~~Other existing law excepts from this requirement certain loans of firearms between persons who are personally known to each other if certain criteria are met, including that the loan does not exceed 30 days.~~ Existing law makes a violation of this requirement a crime.

~~This bill would instead make that provision applicable only when the loan does not exceed 10 days in duration. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

The bill would ~~also create additional~~ exceptions to the dealer requirement for a loan of a firearm that occurs at the ~~lender's~~ *individual receiving the firearm and lender's shared* residence or private property and for a loan in which the firearm is being stored in the receiver's residence or in an enclosed structure on the receiver's private property, if certain criteria are met.

~~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.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ *no*.

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) Under current state procedures, the initial acquisition process
- 4 to acquire a firearm includes, among other requirements, a
- 5 background check, a Firearm Safety Certificate, ~~and~~ *and*, upon
- 6 completion of the process, registration of that firearm to that person
- 7 in the Centralized Registry as set forth in Section 11106 of the
- 8 Penal Code.
- 9 (2) The current background check and registration process
- 10 allows only one person to initially acquire and be the registered
- 11 owner of that firearm.

1 (3) The California Constitution provides that property owned
2 before marriage or acquired during marriage by gift, will, or
3 inheritance is separate property.

4 (4) Community property rights are protected through the Due
5 Process Clause and other clauses of the California Constitution.

6 (5) On July 20, 2015, the California Supreme Court in the case
7 *In re Marriage of Davis* (2015) 61 Cal.4th 846 confirmed that
8 Section 760 of the Family Code specifically allows property
9 acquired by the spouses during the marriage not to be treated as
10 community property where otherwise provided by statute.

11 (6) Allowing property acquired by spouses during the marriage
12 not to be treated as community property where otherwise provided
13 by statute was foreshadowed by the decision of the Court of
14 Appeals in *Crosby v. H.L.C. Properties LTD* (2014) 223
15 Cal.App.4th 597, 609, fn. 10.

16 (7) Under current law, a person who is licensed to carry a
17 handgun in public is licensed to carry a specific handgun, and in
18 many jurisdictions licensing authorities license both spouses to
19 carry the same handgun, but in other jurisdictions licenses to carry
20 will not be issued unless the handgun is first registered to the
21 applicant.

22 (8) Because carry license information is reported to the
23 Department of Justice and is required to be included in the
24 Centralized Registry, joint registration is occurring today, albeit
25 under the carry license system.

26 (9) Joint family firearm registration is expressly allowed for
27 assault weapons and .50 BMG rifles.

28 (10) Joint spousal firearm registration exists in Hawaii,
29 Maryland, and New York.

30 (11) Firearms initially constituting separate property may be
31 jointly registered to a spouse via the transmutation process and via
32 the operation of law procedures set forth in subdivision (g) of
33 Section 16990 and paragraph (2) of subdivision (a) of Section
34 27920 of the Penal Code, without being processed through a
35 state-licensed firearms dealer. The clear intent of those provisions
36 is to allow joint spousal registration via that process but not to
37 otherwise permit joint registration. The amendments to Section
38 11106 of the Penal Code made by the act that added this ~~section~~
39 *section*, insofar as ~~relevant~~ *relevant*, are designed to effectuate that
40 intent.

1 (12) Also via the operation of law process, separate property of
2 one spouse may be transmuted to another spouse as separate
3 property.

4 (13) Firearms brought into this state by new residents which
5 were acquired outside of this state by such persons when residents
6 of that other state are being allowed to be jointly registered in
7 effect to both spouses pursuant to the procedures set forth in
8 Section 27560 of the Penal Code, without being processed through
9 a state-licensed firearms dealer. The amendments made to Section
10 11106 of the Penal Code by the act that added this ~~section~~ *section*,
11 insofar as ~~relevant~~ *relevant*, are designed to allow that to continue
12 if it is occurring now.

13 (14) The Department of Justice, pursuant to Section 28000 of
14 the Penal Code, allows a person to ~~de-register~~ *deregister* a firearm
15 if certain conditions are met, including, among other conditions,
16 providing the department with official documentation that the
17 firearm has, in fact, been disposed of. The amendments made to
18 Section 11106 of the Penal Code by the act that added this ~~section~~
19 *section*, insofar as ~~relevant~~ *relevant*, are designed to allow that to
20 continue if it is occurring now.

21 (15) The process of ~~de-registering~~ *deregistering* a firearm by
22 filing a form pursuant to Section 28000 of the Penal Code detailing
23 the disposal of a firearm because the firearm was transferred to
24 another requires submission to the department of a formal
25 department-generated document stating that the firearm was
26 ~~re-registered~~ *reregistered*. If the disposition form is not submitted
27 pursuant to Section 28000 of the Penal Code, then a firearm may
28 in effect be technically listed as being registered to both parties
29 involved in the transfer.

30 (16) There are legitimate concerns that if joint firearm
31 registration is explicitly allowed by virtue of the amendments made
32 to Section 11106 of the Penal Code by the act that added this
33 section, it may create a number of issues regarding third-party
34 rights when the time comes to dispose of those jointly registered
35 firearms. Those concerns exist now as to jointly registered .50
36 BMG rifles and assault weapons.

37 (b) It is the intent of the Legislature, if joint firearm registration
38 does not occur pursuant to the amendments made to Section 11106
39 of the Penal Code by the act that added this section, to enact
40 legislation that will go into effect prior to January 1, 2019, to

1 implement an explicit joint firearm registration system in a
2 user-friendly manner that protects public safety and does not
3 complicate the disposition of firearms that are jointly registered.

4 (c) It is also the intent of the Legislature that the Department of
5 Justice make available on its Internet Web site, in an editable public
6 display format, the form referred to in Section 27882 of the Penal
7 Code.

8 SEC. 2. Section 11106 of the Penal Code is amended to read:

9 11106. (a) (1) In order to assist in the investigation of crime,
10 the prosecution of civil actions by city attorneys pursuant to
11 paragraph (3) of subdivision (b), the arrest and prosecution of
12 criminals, and the recovery of lost, stolen, or found property, the
13 Attorney General shall keep and properly file a complete record
14 of all of the following:

15 (A) All copies of fingerprints.

16 (B) Copies of licenses to carry firearms issued pursuant to
17 Section 26150, 26155, 26170, or 26215.

18 (C) Information reported to the Department of Justice pursuant
19 to Section 26225, 27875, 27920, 27966, or 29830.

20 (D) Dealers' records of sales of firearms.

21 (E) Reports provided pursuant to Article 1 (commencing with
22 Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or
23 pursuant to any provision listed in subdivision (a) of Section 16585.

24 (F) Forms provided pursuant to Section 12084, as that section
25 read prior to being repealed on January 1, 2006.

26 (G) Reports provided pursuant to Article 1 (commencing with
27 Section 26700) and Article 2 (commencing with Section 26800)
28 of Chapter 2 of Division 6 of Title 4 of Part 6, that are not dealers'
29 records of sales of firearms.

30 (H) Information provided pursuant to Section 28255.

31 (I) Reports of stolen, lost, found, pledged, or pawned property
32 in any city or county of this state.

33 (2) The Attorney General shall, upon proper application therefor,
34 furnish the information to the officers referred to in Section 11105.

35 (b) (1) The Attorney General shall permanently keep and
36 properly file and maintain all information reported to the
37 Department of Justice pursuant to the following provisions as to
38 firearms and maintain a registry thereof:

1 (A) Article 1 (commencing with Section 26700) and Article 2
2 (commencing with Section 26800) of Chapter 2 of Division 6 of
3 Title 4 of Part 6.

4 (B) Article 1 (commencing with Section 27500) of Chapter 4
5 of Division 6 of Title 4 of Part 6.

6 (C) Chapter 5 (commencing with Section 28050) of Division 6
7 of Title 4 of Part 6.

8 (D) Any provision listed in subdivision (a) of Section 16585.

9 (E) Former Section 12084.

10 (F) Section 28255.

11 (G) Any other law.

12 (2) The registry shall consist of all of the following:

13 (A) The name, address, identification of, place of birth (state
14 or country), complete telephone number, occupation, sex,
15 description, and all legal names and aliases ever used by the owner
16 or person being loaned the particular firearm as listed on the
17 information provided to the department on the Dealers' Record of
18 Sale, the Law Enforcement Firearms Transfer (LEFT), as defined
19 in former Section 12084, or reports made to the department
20 pursuant to any provision listed in subdivision (a) of Section 16585,
21 Section 28255, or any other law.

22 (B) The name and address of, and other information about, any
23 person (whether a dealer or a private party) from whom the owner
24 acquired or the person being loaned the particular firearm and
25 when the firearm was acquired or loaned as listed on the
26 information provided to the department on the Dealers' Record of
27 Sale, the LEFT, or reports made to the department pursuant to any
28 provision listed in subdivision (a) of Section 16585 or any other
29 law.

30 (C) Any waiting period exemption applicable to the transaction
31 which resulted in the owner of or the person being loaned the
32 particular firearm acquiring or being loaned that firearm.

33 (D) The manufacturer's name if stamped on the firearm, model
34 name or number if stamped on the firearm, and, if applicable, the
35 serial number, other number (if more than one serial number is
36 stamped on the firearm), caliber, type of firearm, if the firearm is
37 new or used, barrel length, and color of the firearm, or, if the
38 firearm is not a handgun and does not have a serial number or any
39 identification number or mark assigned to it, that shall be noted.

1 (E) ~~The Commencing January 1, 2019, the~~ name of the person
2 and his or her spouse or domestic partner if the firearm is registered
3 to both individuals. The department shall modify its registration
4 forms to the extent necessary, if it has not already done so, so that
5 both spouses or both domestic partners may register as the owners
6 of the firearm. This subparagraph shall not require the department
7 to change the Dealer's Record of Sale form.

8 (3) Information in the registry referred to in this subdivision
9 shall, upon proper application therefor, be furnished to the officers
10 referred to in Section 11105, to a city attorney prosecuting a civil
11 action, solely for use in prosecuting that civil action and not for
12 any other purpose, or to the person listed in the registry as the
13 owner or person who is listed as being loaned the particular firearm.

14 (4) If any person is listed in the registry as the owner of a firearm
15 through a Dealers' Record of Sale prior to 1979, and the person
16 listed in the registry requests by letter that the Attorney General
17 store and keep the record electronically, as well as in the record's
18 existing photographic, photostatic, or nonerasable optically stored
19 form, the Attorney General shall do so within three working days
20 of receipt of the request. The Attorney General shall, in writing,
21 and as soon as practicable, notify the person requesting electronic
22 storage of the record that the request has been honored as required
23 by this paragraph.

24 (c) (1) If the conditions specified in paragraph (2) are met, any
25 officer referred to in paragraphs (1) to (6), inclusive, of subdivision
26 (b) of Section 11105 may disseminate the name of the subject of
27 the record, the number of the firearms listed in the record, and the
28 description of any firearm, including the make, model, and caliber,
29 from the record relating to any firearm's sale, transfer, registration,
30 or license record, or any information reported to the Department
31 of Justice pursuant to any of the following:

32 (A) Section 26225, 27875, or 27920.

33 (B) Article 1 (commencing with Section 26700) and Article 2
34 (commencing with Section 26800) of Chapter 2 of Division 6 of
35 Title 4 of Part 6.

36 (C) Article 1 (commencing with Section 27500) of Chapter 4
37 of Division 6 of Title 4 of Part 6.

38 (D) Chapter 5 (commencing with Section 28050) of Division
39 6 of Title 4 of Part 6.

1 (E) Article 2 (commencing with Section 28150) of Chapter 6
2 of Division 6 of Title 4 of Part 6.

3 (F) Article 5 (commencing with Section 30900) of Chapter 2
4 of Division 10 of Title 4 of Part 6.

5 (G) Chapter 2 (commencing with Section 33850) of Division
6 11 of Title 4 of Part 6.

7 (H) Any provision listed in subdivision (a) of Section 16585.

8 (2) Information may be disseminated pursuant to paragraph (1)
9 only if all of the following conditions are satisfied:

10 (A) The subject of the record has been arraigned for a crime in
11 which the victim is a person described in Section 6211 of the
12 Family Code and is being prosecuted or is serving a sentence for
13 the crime, or the subject of the record is the subject of an
14 emergency protective order, a temporary restraining order, or an
15 order after hearing, which is in effect and has been issued by a
16 family court under the Domestic Violence Protection Act set forth
17 in Division 10 (commencing with Section 6200) of the Family
18 Code.

19 (B) The information is disseminated only to the victim of the
20 crime or to the person who has obtained the emergency protective
21 order, the temporary restraining order, or the order after hearing
22 issued by the family court.

23 (C) Whenever a law enforcement officer disseminates the
24 information authorized by this subdivision, that officer or another
25 officer assigned to the case shall immediately provide the victim
26 of the crime with a “Victims of Domestic Violence” card, as
27 specified in subparagraph (H) of paragraph (9) of subdivision (c)
28 of Section 13701.

29 (3) The victim or person to whom information is disseminated
30 pursuant to this subdivision may disclose it as he or she deems
31 necessary to protect himself or herself or another person from
32 bodily harm by the person who is the subject of the record.

33 ~~SEC. 3. Section 11106.5 is added to the Penal Code, to read:~~

34 ~~11106.5. (a) The Attorney General shall prepare and submit~~
35 ~~to the Legislature on or before January 1, 2018, a report concerning~~
36 ~~all of the following:~~

37 ~~(1) What process is occurring now as to the joint registration~~
38 ~~of firearms between spouses and registered domestic partners~~
39 ~~pursuant to the operation of law procedures by virtue of the~~

1 amendments made to Section 11106 of the Penal Code by the act
2 that added this section:

3 (2) ~~Any issues that have arisen as to joint family registration of~~
4 ~~.50 BMG rifles and assault weapons.~~

5 (3) ~~The barriers that exist, if any, to joint registration of firearms~~
6 ~~between spouses and registered domestic partners that are not~~
7 ~~obviated by the amendments made to Section 11106 of the Penal~~
8 ~~Code by the act that added this section.~~

9 (4) ~~The feasibility and costs of explicitly implementing a joint~~
10 ~~firearm registration system beyond the provisions of this act made~~
11 ~~by the amendments made to Section 11106 of the Penal Code by~~
12 ~~the act that added this section without disrupting the current Dealer~~
13 ~~Record of Sale system.~~

14 (5) ~~The overall costs of creating and maintaining, and the costs~~
15 ~~to the individuals of using, a joint firearm registration system~~
16 ~~beyond those changes made by the amendments made to Section~~
17 ~~11106 of the Penal Code by the act that added this section.~~

18 (6) ~~The effect of an explicit joint firearm registration system on~~
19 ~~overall efforts by the Department of Justice in terms of information~~
20 ~~and computerized upgrades that the department is currently~~
21 ~~undertaking.~~

22 (7) ~~Recommendations for the disposition of jointly registered~~
23 ~~firearms that protect public safety, the registrants, and third parties.~~

24 (8) ~~Proposals for any specific statutory changes necessary to~~
25 ~~implement the recommendations identified pursuant to paragraph~~
26 ~~(7), if any.~~

27 (b) ~~The report required by subdivision (a) shall be submitted~~
28 ~~pursuant to Section 9795 of the Government Code.~~

29 (e) ~~This section shall remain in effect only until January 1, 2018,~~
30 ~~and as of that date is repealed, unless a later enacted statute, that~~
31 ~~is enacted before January 1, 2018, deletes or extends that date.~~

32 ~~SEC. 4.~~

33 *SEC. 3.* Section 17060 of the Penal Code is amended to read:

34 17060. (a) As used in Section 25135, “residence” means any
35 structure intended or used for human habitation, including, but not
36 limited to, houses, condominiums, rooms, motels, hotels,
37 time-shares, and recreational or other vehicles where human
38 habitation occurs.

39 (b) *As used in Section 27881, “resides within the same*
40 *residence” means that the individuals reside within the same*

1 *structure intended or used for human habitation, including, but*
2 *not limited to, houses, condominiums, and rooms, where human*
3 *habitation occurs, but does not mean individuals who reside within*
4 *discrete units of an apartment building, apartment complex, duplex,*
5 *or other similar complex.*

6 ~~(b)~~

7 (c) As used in Section 27882, “residence” means any structure
8 intended or used for human habitation, including, but not limited
9 to, houses, condominiums, rooms, motels, hotels, and time-shares,
10 but does not include a recreational or other vehicle where human
11 habitation occurs.

12 ~~SEC. 5. Section 27880 of the Penal Code is amended to read:~~
13 ~~27880. Section 27545 does not apply to the loan of a firearm~~
14 ~~between persons who are personally known to each other, if all of~~
15 ~~the following requirements are satisfied:~~

16 ~~(a) The loan is infrequent, as defined in Section 16730.~~

17 ~~(b) The loan is for any lawful purpose.~~

18 ~~(c) The loan does not exceed 10 days in duration.~~

19 ~~(d) Until January 1, 2015, if the firearm is a handgun, the~~
20 ~~individual being loaned the firearm shall have a valid handgun~~
21 ~~safety certificate. Commencing January 1, 2015, for any firearm,~~
22 ~~the individual being loaned the firearm shall have a valid firearm~~
23 ~~safety certificate, except that in the case of a handgun, an unexpired~~
24 ~~handgun safety certificate may be used.~~

25 ~~SEC. 6.~~

26 ~~SEC. 4.~~ Section 27881 is added to the Penal Code, to read:
27 27881. Section 27545 does not apply to the loan of a firearm
28 provided all of the following are met:

29 (a) The firearm being loaned is registered to the person making
30 the loan pursuant to Section 11106.

31 (b) The loan occurs within the ~~lender’s individual receiving the~~
32 ~~firearm and lender’s shared~~ place of residence or private property,
33 which is not zoned for commercial, retail, or industrial activity.

34 (c) The firearm at all times stays within the ~~lender’s individual~~
35 ~~receiving the firearm and lender’s shared~~ place of residence or
36 private property, which is not zoned for commercial, retail, or
37 industrial activity.

38 (d) The individual receiving the firearm is not prohibited by
39 state or federal law from possessing, receiving, owning, or
40 purchasing a firearm.

1 (e) The individual receiving the firearm is 18 years of age or
2 older.

3 (f) The individual receiving the firearm has a valid firearm safety
4 certificate, except that if the firearm being loaned is a handgun,
5 the individual may instead have an unexpired handgun safety
6 certificate.

7 (g) *The person being loaned the firearm resides within the same*
8 *residence as the lender.*

9 ~~SEC. 7.~~

10 SEC. 5. Section 27882 is added to the Penal Code, to read:

11 27882. Section 27545 does not apply to the loan of a firearm
12 provided all of the following are met:

13 (a) The firearm being loaned is registered to the person making
14 the loan pursuant to Section 11106.

15 (b) The firearm being loaned is stored in the receiver's place of
16 residence or in an enclosed structure on the receiver's private
17 property, which is not zoned for commercial, retail, or industrial
18 activity.

19 (c) The firearm at all times stays within the receiver's place of
20 residence or in an enclosed structure on the receiver's private
21 property, which is not zoned for commercial, retail, or industrial
22 activity.

23 (d) The individual receiving the firearm is not prohibited by
24 state or federal law from possessing, receiving, owning, or
25 purchasing a firearm.

26 (e) The individual receiving the firearm is 18 years of age or
27 older.

28 (f) The individual receiving the firearm has a valid firearm safety
29 certificate, except that if the firearm being loaned is a handgun,
30 the individual may instead have an unexpired handgun safety
31 certificate.

32 (g) One of the following applies:

33 (1) The firearm is maintained within a locked container.

34 (2) The firearm is disabled by a firearm safety device.

35 (3) The firearm is maintained within a locked gun safe.

36 (4) The firearm is locked with a locking device, as defined in
37 Section 16860, which has rendered the firearm inoperable.

38 (h) The loan does not exceed 30 days in duration.

39 (i) The loan is made without consideration.

1 (j) There is writing in a format prescribed by the Department
2 of Justice that explains the obligations imposed by this section that
3 is signed by both the party loaning the firearm for storage and the
4 person receiving the firearm.

5 (k) Both parties to the loan have signed copies of the writing
6 required by subdivision (j).

7 ~~SEC. 8. No reimbursement is required by this act pursuant to~~
8 ~~Section 6 of Article XIII B of the California Constitution because~~
9 ~~the only costs that may be incurred by a local agency or school~~
10 ~~district will be incurred because this act creates a new crime or~~
11 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
12 ~~for a crime or infraction, within the meaning of Section 17556 of~~
13 ~~the Government Code, or changes the definition of a crime within~~
14 ~~the meaning of Section 6 of Article XIII B of the California~~
15 ~~Constitution.~~