
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 497 **Hearing Date:** April 18, 2017
Author: Portantino
Version: March 20, 2017
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Transfers*

HISTORY

Source: Brady Campaign to Prevent Gun Violence

Prior Legislation: AB 202 (Knox) Chapter 128, Stats. of 1999
AB 532 (Knox) Failed passage on Assembly Floor, 1997-98
AB 1674 (Santiago) Vetoed, 2016

Support: Law Center to Prevent Gun Violence

Opposition: California Sportsmen's Lobby; Eastern Sierra Law Enforcement Coalition;
Firearms Policy Coalition; Gun Owners of California; National Shooting Sports
Foundation; Outdoor Sportsmen's Coalition of California; Safari Club
International; One Individual

The purpose of this bill is to: (1) prohibit any person from making an application to purchase more than one firearm within any 30-day period, as specified; and, (2) add additional exemptions to the 30-day prohibition, as specified.

Existing law prohibits any person from making an application to purchase more than one handgun within any 30-day period. (Penal Code § 27535(a).)

Existing law exempts from the above 30-day prohibition any of the following:

- Any law enforcement agency;
- Any agency duly authorized to perform law enforcement duties;
- Any state or local correctional facility;
- Any private security company licensed to do business in California;
- Any person who is a peace officer, as specified, and is authorized to carry a firearm in the course and scope of employment;

- Any motion picture, television, video production company or entertainment or theatrical company whose production by its nature involves a firearm;
- Any authorized representative of a law enforcement agency, or a federally licensed firearms importer or manufacturer;
- Any private party transaction conducted through a licensed firearms dealer;
- Any person who is a licensed collector and has a current certificate of eligibility issued by the Department of Justice (DOJ);
- The exchange, replacement, or return of a handgun to a licensed dealer within the 30-day period; and,
- A community college that is certified by the Commission on POST to present law enforcement academy basic course or other commission- certified training. (Penal Code § 27535(b).)

Existing law prohibits a handgun from being delivered when a licensed firearms dealer is notified by the DOJ that within the preceding 30-day period the purchaser has made another application to purchase a handgun and the purchase was not exempted, as specified. (Penal Code § 27540(f).)

Existing law provides that the penalties for making more than one application to purchase a handgun within any 30-day period is as follows:

- A first violation is an infraction punishable by a fine of fifty dollars (\$50);
- A second violation is an infraction punishable by a fine of one hundred (\$100); and,
- A third violation is a misdemeanor. (Penal Code § 27590(e)(1)-(3).)

This bill prohibits any person from making an application to purchase more than one firearm within any 30-day period.

This bill adds the following exemptions to the 30-day prohibition:

- The purchase of a firearm, other than a handgun, by a person who possesses a valid, unexpired hunting license issued by the Department of Fish and Wildlife.
- The acquisition of a firearm, other than a handgun, at an auction or similar event conducted by a nonprofit public benefit or mutual benefit corporation to fund the activities of that corporation or local chapters of that corporation.

This bill specifies that the newly added exemptions do not apply to a frame or receiver, unless the frame or receiver listed in the application to purchase and delivered to the recipient is equipped with, is attaches to, or is concurrently accompanied by, a barrel of 16 inches or greater.

COMMENTS

1. Need for This Bill

According to the author:

Last year the Legislature passed AB 1674 (Santiago) to extend the bulk purchase law to all firearms in recognition of the fact that a person acquiring large quantities of guns at one time may be acting as a straw purchaser or gun trafficker but it was vetoed by the Governor because of an exemption repealer in that bill. In fact, a University of Pennsylvania report found that a quarter of all guns used in crime were purchased as part of a multiple-gun sale and that guns purchased in bulk were up to 64% more likely to be used for illegal purposes than guns purchased individually.

In terms of impact, the Department of Justice began to retain records of long gun purchases on January 1, 2014. An analysis of the transaction data from the period January 2014 through June 2015 shows that 81.9% of long guns were sold as a single long gun purchase within a 30-day period. In addition, the likelihood is that a large percentage were also purchased by licensed hunters and at charity events which are not affected by the bill.

However at the opposite end of the spectrum, an individual purchased 177 long guns in two transactions within a one month period (April 2014). Furthermore, sales to single individuals ranging from 5 to 54 long guns per month occurred on 1,787 occasions, totaling 12,090 guns. Department data also shows that when multiple long guns are transferred in a sale, it is more than twice as likely that lower receivers are included which is not covered by the current law but is addressed with the additional amendments in this bill.

The largest bulk sale of long guns in one month to an individual (177 long guns) was composed entirely of lower receivers, which can be built into illegal assault weapons and sold on the black market.

Preventing the flow of illegal guns is important to public safety. A targeted approach limiting firearms sales to one gun per month is a recognized strategy to reduce gun trafficking and keep firearms out of dangerous hands.

AB 1674 deleted the through dealer processing exemption for private party transfers from the bulk purchase law while adding long gun specific exemptions for hunters and charity events. The Governor vetoed AB 1674 because of the repeal of the private party exemption provision but he appeared amenable to signing legislation on this assuming that that exemption and the other exemption in AB 1674 stayed in place. SB 497 meets the Governor's concern by not touching that exemption while including the AB 1674 exemptions.

In addition, as to be amended SB 497 provides that the frame or receiver [the gun minus the barrel – *People v. Arnold*, (2006) 145 Cal.App.4th 1408] of a firearm will be deemed to be a handgun unless the unless the frame or receiver listed in the application to purchase and delivered to the recipient is equipped with, is

attached to, or is concurrently accompanied by, a barrel of 16 inches or greater in length. Any firearm with a barrel 16 inches or greater in length is not considered a handgun under California law. Conversely, under federal law a rifle is a firearm with a barrel of 16 inches in length or greater and a shotgun is any firearm that fires ball shot with a barrel of 18 inches in length or greater.

Because of the interplay of state and federal law, many frames or receivers of firearms are not considered handguns for purposes of the bulk purchase law if they do not come with barrels thus allowing many defacto concealable weapons to be outside the law. To address this, SB 497 treats as a handgun a firearm's frame or receiver unless the frame or receiver listed in the application to purchase and delivered to the recipient is equipped with, is attached to, or is concurrently accompanied by, a barrel of 16 inches or greater in length.

2. History of One-Handgun-a-Month Law

According to the Senate Public Safety Analysis of Assembly Bill 202 (Knox) – 1999, which created the one-handgun-a-month law in California:

The State of Virginia enacted a “one-handgun-a-month” law in 1993 (before the Federal Brady Bill, which required at least a five day waiting period plus a background check for states without such requirements). That state had weak restrictions on handgun sales and it has been stated that gun traffickers from New York City routinely traveled to Virginia to purchase quantities of weapons to take back for illegal sale in other states. Purchases of more than one handgun per 30-day period in Virginia is allowed upon completion of an "enhanced" background check when the purchase is for lawful business or personal use, for purposes of collectors, bulk sales and purchases from estates, to replace a lost or stolen weapon, and similar situations.

Supporters of limits on purchases of handguns assume that the Virginia limits and the limits in this bill would only affect a very small proportion of legitimate handgun purchasers. A family of two adults could still purchase 24 handguns a year under the provisions of both this bill and the Virginia law.

Virginia repealed this law in 2012. But, according to the Law Center to Prevent Gun Violence:

Virginia's one-gun-a-month law – which was in effect from 1993 to 2012 and prohibited the purchase of more than one handgun per person in any 30-day period – significantly reduced the number of crime guns traced to Virginia dealers. Virginia initially adopted its law after the state became recognized as a primary source of crime guns recovered in states in the northeastern U.S. After the law's adoption, the odds of tracing a gun originally acquired in the Southeast to a Virginia gun dealer (as opposed to a dealer in a different southeastern state) dropped by:

- 71% for guns recovered in New York;
- 72% for guns recovered in Massachusetts; and
- 66% for guns recovered in New Jersey, New York, Connecticut, Rhode Island and Massachusetts combined.

(<http://smartgunlaws.org/multiple-purchases-sales-of-firearms-policy-summary/>
[footnotes omitted].)

Other states that have limits on the number of firearms that can be sold in one month include:

- California: California law prohibits any person from purchasing more than one handgun within any 30-day period. In addition, a licensed firearms dealer may not deliver a handgun to any person following notification from the California Department of Justice that the purchaser has applied to acquire a handgun within the preceding 30-day period. Finally, firearms dealers must conspicuously post in their licensed premises a warning, in block letters at least one inch in height, notifying purchasers of these restrictions.
- District of Columbia: A person may not register more than one handgun in the District during any 30-day period. Since every handgun must be registered, this amounts to a purchase and sale limitation of one handgun per 30-day period. . .
- Maryland: Maryland prohibits any person from purchasing more than one handgun or assault weapon within a 30-day period. Under limited circumstances, a person may be approved by the Secretary of the Maryland State Police to purchase multiple handguns or assault weapons in a 30-day period. Maryland also penalizes any dealer or other seller who knowingly participates in an illegal purchase of a handgun or assault weapon. . .
- New Jersey: New Jersey prohibits licensed firearms dealers from knowingly delivering more than one handgun to any person within any 30-day period. With limited exceptions, no person may purchase more than one handgun within any 30-day period. New Jersey requires a handgun purchaser to obtain a separate permit for each handgun purchased, and present the permit to the seller. The seller must keep a copy of each permit presented.

(<http://smartgunlaws.org/multiple-purchases-sales-of-firearms-policy-summary/>[footnotes omitted].)

3. Senate Bill 1674 (Santiago): Veto Message

The Governor stated in his veto message of Senate Bill 1674, which would have prohibited any person from making an application to purchase more than one firearm within any 30-day period:

This bill generally prohibits the purchase of more than one firearm within any 30-day period. It should be noted that California already bans the purchase of more than one handgun per month.

While well-intentioned, I believe this bill would have the effect of burdening lawful citizens who wish to sell certain firearms that they no longer need.

Given California's stringent laws restricting gun ownership, I do not believe this additional restriction is needed.

4. Author's Amendments

Penal Code section 27535(c) will be amended as follows:

(c) ~~For the purposes of~~ Paragraphs (14) and (15) of subdivision (b) *do not apply to the purchase of a frame or receiver of a firearm is a handgun* unless the frame or receiver listed in the application to purchase and delivered to the recipient is equipped with, is attached to, or is concurrently accompanied by, a barrel of 16 inches or greater in length.

5. Argument in Support

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

SB 497 applies existing law under AB 202 to long guns, including rifles, shotguns, and lower receivers. Under SB 497, firearms (handguns *and* long guns) will not be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser had made another application to purchase a firearm. Private party transactions will continue to be exempt. Additionally, long gun purchasers with a valid hunting license issued by the Department of Fish and Wildlife and the acquisition of a long gun at an auction or similar event conducted by a nonprofit will be exempt.

It stands to reason that a person buying large quantities of guns at one time may be acting as a straw purchaser or gun trafficker. Moreover, firearms acquired this way are frequently used in crime. In fact, an ATF study of tracing data demonstrated that 22% of all handguns recovered in crime in 1999 were originally purchased as part of a multiple sale. [FN omitted.] A similar study found that 20% of all handguns recovered in crime in 2000 were originally purchased as part of a multiple sale. [FN omitted.] Additionally, a University of Pennsylvania report found that a quarter of all guns used in crime were purchased as part of a multiple-gun sale and that guns purchased in bulk were up to 64% more likely to be used for illegal purposes than guns purchased individually. [FN omitted.]

The California Brady Campaign believes that handguns and long guns should be subject to the same laws. Eighteen years ago, it was thought that handguns made up an overwhelming share of crime guns, but the data shows that this is no longer the case. Of the 26,682 crime guns entered into the Department of Justice's Automated Firearms Systems database in 2009, 11,500 were long guns. [FN omitted.] Additionally, the Department has found that over the last three fiscal years, nearly half the illegal firearms recovered from prohibited persons through the Armed Prohibited Persons System are long guns. [FN omitted.]

Since 1999, Californians have typically purchased more long guns than handguns every year. [FN omitted.] Currently, these long guns include legal weapons that have military-style features, featureless weapons with exchangeable magazines that enable rapid reload, and lower receivers, which may be assembled into military-style weapons. Limiting multiple-gun sales within a short period of time for such weapons, which are more lethal than handguns, is clearly in the interest of public safety.

The Department of Justice began to retain records of long gun purchases on January 1, 2014. An analysis of the transaction data from the period January 2014 through June 2015 shows that 81.9% of long guns were sold as a single long gun purchase within a 30-day period. [FN omitted.] Clearly, the vast majority of long gun purchasers will not be impacted by SB 497. However at the opposite end of the spectrum, an individual purchased 177 long guns in two transactions within a one month period (April 2014). [FN omitted.] Furthermore, sales to single individuals ranging from 5 to 54 long guns per month occurred on 1,787 occasions, totaling 12,090 guns. [FN omitted.] Department data also shows that when multiple long guns are transferred in a sale, it is more than twice as likely that lower receivers are included. [FN omitted.] The largest bulk sale of long guns in one month to an individual (177 long guns) was composed *entirely* of lower receivers, [FN omitted] which can be built into illegal assault weapons and sold on the black market.

Preventing the flow of illegal guns is important to public safety regardless of whether the firearm is a handgun or long gun. Limiting firearms sales to one gun per 30-day period is a recognized strategy to reduce gun trafficking and keep firearms out of dangerous hands. The California Brady Campaign Chapters stand in strong support of SB 497 and thank you for carrying this important measure.

6. Argument in Opposition

According to the Firearms Policy Coalition:

SB 497 seeks to limit, chill, and ration a fundamental, individual right by making it a crime to even apply for the otherwise lawful purchase of a constitutionally-protected firearm more than once every thirty days.

As the shooting sports experience historic growth from participation by more and more law-abiding people across all social, racial, gender, and financial lines, Senator Portantino would respond by creating an artificial market cap on the very instruments protected by the Second Amendment to the United States Constitution.

This type of legislation will only fuel the underground economy as people seek to dispose of a collection—or build one, no longer feeling bound by the constantly moving goal-posts masquerading as laws in California.

The Second Amendment is not a second-class right and California's law-abiding residents are not second-class people.

SB 497 must be rejected for its moral and policy flaws if not for its blatant constitutional infirmities.

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