
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1406 **Hearing Date:** June 20, 2023
Author: McCarty
Version: April 20, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: waiting periods*

HISTORY

Source: California Department of Justice

Prior Legislation: SB 715 (Portantino, Ch. 250, Stats. of 2021)
AB 500 (Ammiano, Ch. 737, Stats. of 2013)

Support: Unknown

Opposition: Gun Owners of California

Assembly Floor Vote: 65 - 2

PURPOSE

The purpose of this bill is to authorize the Department of Justice (DOJ) to delay the delivery of a firearm if additional research is required to determine the recipient's eligibility, and to authorize the DOJ to delay the delivery of a firearm for up to 30 days if an emergency, as defined, has prevented the department from determining a purchaser's eligibility.

Existing law generally prohibits the sale, lease or transfer of firearms unless the person has been issued a license by the California Department of Justice, and establishes various exceptions to this prohibition. (Penal Code §§26500 – 26625)

Existing law provides that a license to sell firearms is subject to forfeiture for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Penal Code §26800(a).)

Existing law restricts delivery of a firearm within 10 days of the application to purchase, within 10 days of a submission to the DOJ of any correction to the application, or within 10 days of the submission to the DOJ of any requisite fee. (Pen. Code, §§ 26815, subd. (a) & 27540, subd. (a).)

Existing law prohibits persons under 21 years of age from being sold a firearm unless an exception applies. Exempts persons over 18 from this prohibition if they possess a valid hunting license, as specified. (Pen. Code, § 27510.)

Existing law prohibits an individual from making an application to purchase one handgun or semiautomatic centerfire rifle within any 30-day period, subject to various exceptions. (Penal Code §27535.)

Existing law requires every licensed dealer to keep a register or record of electronic or telephonic transfer in which specified information regarding firearm purchases must be recorded. (Pen. Code §§ 28100, 28160)

Existing law generally requires a firearms dealer to record and forward certain firearm transaction information, including firearm purchaser information, to the DOJ before completing a sale, lease, or transfer of a firearm. (Pen. Code, §§ 28200 *et seq.*)

Existing law provides that on the date of the application to purchase a firearm, two copies of the original sheet of the register shall be placed in the mail and addressed to the Department of Justice. (Pen. Code §28210, subd. (d).)

Existing law requires the DOJ, upon receiving the firearm purchaser information, to examine records in order to determine if the firearm purchaser is prohibited by law from owning or possessing a firearm. (Pen. Code, § 28220, subd. (a).)

Existing law provides that if the DOJ determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is attempting to purchase more than one handgun or semiautomatic centerfire rifle in a 30-day period, it shall immediately notify the dealer and the chief of the police department or county sheriff of the city, county or city and county in which the sale was made. (Pen. Code, § 28220, subd. (c).)

Existing law provides that the DOJ must immediately notify the dealer to delay the firearms transaction beyond 10 days if the purchaser's records indicate any of the following circumstances:

- The purchaser has been taken into custody due to specified mental health treatments and the DOJ cannot determine whether the purchaser is prohibited due to such custody;
- The purchaser has been arrested or charged for a crime that, if convicted, would render the purchaser prohibited from possessing a firearm; or,
- The purchaser previously bought a firearm within the past 30 days. (Pen. Code, § 28220, subd. (f)(1)(A)(i)-(iii).)

Existing law provides that the DOJ must notify the purchaser by mail regarding the delay and explain the process to resolve any inaccuracies or incompleteness. (Pen. Code, § 28220, subd. (f)(2).)

Existing law sets forth the procedure to be followed by the DOJ, after the 10-day waiting period but within 30 days of the dealer's original submission of purchaser information, if it is able to ascertain the final disposition of an arrest or criminal charge, the outcome of mental health treatment, or the purchaser's eligibility to purchase a firearm. (Pen. Code, § 28220, subd. (f)(3).)

Existing law provides that if the DOJ is unable to ascertain the information above within 30 days of the original submission of purchaser information, it shall immediately notify the dealer, and the dealer then may transfer the firearm to the purchaser. (Pen. Code, § 28220, subd. (f)(4).)

Existing law provides that, commencing July 1, 2025, for firearms purchasers over 18 but under 21 years of age, if the DOJ is unable to verify the validity of their hunting license, the DOJ must immediately notify the dealer to cancel the sale and notify the purchaser of such by mail. (Pen. Code, § 28220, subd. (f)(5).)

Existing law sets forth definitions for the terms “state of war emergency,” “state of emergency” and “local emergency.” (Gov. Code § 8558.)

This bill authorizes the DOJ to delay a firearm transaction for up to 30 days after the dealer’s original submission of the purchaser information if there is a state of war or emergency preventing DOJ from determining a firearm purchaser’s eligibility.

This bill authorizes the DOJ to notify a firearms dealer to delay a firearms transaction up to 30 days after receiving the transaction application if the purchaser is possibly ineligible to possess a firearm for specified criminal convictions or mental health confinements and the DOJ cannot determine the disposition of the convictions or confinements.

This bill authorizes the DOJ to notify a firearms purchaser of a delay by mail or through other means determined by the DOJ, and exempts the DOJ from such notification requirement if a specified emergency occurs.

This bill authorizes the DOJ to notify a minor seeking to purchase a firearm pursuant to a hunting license of a delay by mail or by other means determined by DOJ.

COMMENTS

1. Need for This Bill

According to the Author:

AB 1406 simply grants the DOJ extra time to determine if a firearm should be transferred to a buyer during a state of emergency. We should be 100% certain that California buyers be eligible to own a gun before handing a weapon over.

2. Firearm Purchases: Waiting Periods and Background Checks

Background checks are a central component of firearm sales and transfers in California. Under federal law, federally licensed firearms dealers (or “FFLs”) are required to initiate a background check on purchasers prior to a sale. Federal law also provides states with the option of serving as a “point of contact” and conducting their own background checks or having checks performed by the FBI. California’s Proposition 63, effective July 1, 2017, required the DOJ to serve as the point of contact for firearm purchaser background checks. Thus, dealers must initiate the background check required by federal law by contacting the DOJ, and must furnish the DOJ with

various information about the purchaser.¹ The DOJ then checks the purchaser information against federal and state databases to ensure that the prospective purchaser is authorized to purchase and possess a firearm.

Existing law also includes a 10-day waiting period that restricts a licensed dealer from delivering or transferring a firearm to a person within 10 days of the application to purchase the firearm, the submission of any correction to the application, or the submission of any fee required, after notice from DOJ that the required fee has not been transmitted.² Even though the required background checks can usually be completed within a few days, licensed dealers must wait the full 10 days before transferring possession of the firearm to the purchaser. This 10-day period is referred to as a “cooling off” period, and in large part are intended to prevent acts of violence or suicide attempts. In 2016, the Ninth Circuit Court of Appeals upheld the constitutionality of California’s 10-day waiting period, holding that the waiting period did not violate plaintiffs’ Second Amendment rights, and constituted a “reasonable precaution for the purchase of a second or third weapon, as well as for a first purchase.”³

Existing law contains several different procedures that DOJ must follow depending on the outcome of the background check during the 10-day waiting period. If the DOJ determines that the person is prohibited by state or federal law from purchases, possessing or owning a firearm, it must immediately notify law enforcement.⁴ If records show that the purchaser is 1) undergoing mental health treatment or evaluation, as specified 2) is arrested or charged with a crime that may render them a prohibited person or 3) may be attempting to purchase more than one handgun or semiautomatic centerfire rifle in one month, and the DOJ is unable to ascertain whether the person is in fact prohibited by the end of the waiting period, the department is required to notify the dealer to delay the transaction. However, the transaction may only be delayed for up to 30 days.⁵

3. *Campos v. Becerra* and Effect of This Bill

When the COVID-19 pandemic began in 2020, the DOJ began facing significant complication in completing background checks within the prescribed 10-day period, and quickly fell behind in processing background checks associated with firearm purchase applications. Consequently, the department was sued by a group of plaintiffs alleging that it had violated the law by taking more than 10 days to process the background checks, and that the background checks should have been approved after 10 days notwithstanding the DOJ’s inability to conduct the checks.⁶ The trial court ruled in favor of the plaintiffs, concluding that the relevant statute – Penal Code §28220 – only allowed for a delay in three very specific circumstances, none of which included statewide emergencies: where a purchaser may be prohibited from possessing a firearm based on their mental health record, criminal record, or is ineligible because they purchased a handgun or

¹ Penal Code §§28160, 28205

² Penal Code §§ 26815, 27540, 28220

³ *Silvester v. Harris* (2016), 843 F.3d 816

⁴ Penal Code §28220(c)

⁵ Penal Code §28220(f)(1),(3),(4).

⁶ *Campos v. Becerra* (2022) San Diego Superior Court, Case No. 37-2020-00030178.

semiautomatic centerfire rifle within the previous 30 days.⁷ The DOJ appealed the ruling, and the case is now on appeal in the Fourth District Court of Appeal.⁸

According to the Department of Justice, which is sponsoring this bill, “without legislative action, the DOJ could be required to allow firearms to be transferred after 10 days without a background check—even if there was another global level emergency justifying the delay in the process.” This bill authorizes the DOJ to delay the transfer of a firearm to a purchaser for up to 30 days if a declared emergency renders the department unable to determine a purchaser’s eligibility by the conclusion of the 10-day waiting period. Additionally, the bill requires the DOJ to delay a firearm transaction for up to 30 days if the department is unable to determine the effect of past criminal convictions or mental health confinements on a firearm purchaser’s eligibility. However, if, by the end of the 30 days, the DOJ is still unable to ascertain the effect of those prior convictions or confinements, the DOJ must approve the transfer of the firearm to the purchaser, as is the case under existing law with regard to the evaluation of current arrests, charges, or mental health confinements.

4. Committee Amendments

The Author has agreed to take several amendments clarifying the process to be followed by DOJ when a prohibited person attempts to purchase a firearm, when there is an attempted sale of a stolen firearm, and when it cannot obtain the purchasers eligibility by the end of the prescribed waiting period. Specifically, the author plans to take the following amendments in committee:

- Require the DOJ, when it has determined that a purchaser is a prohibited person and after it has notified the dealer and law enforcement, to notify the purchaser and explain the process by which the purchaser may obtain specified records and report inaccuracies on those records.
- Require the DOJ, if the firearm at issue is confirmed to be a stolen firearm, to reject the purchase, notify the dealer that the firearm is stolen, and notify law enforcement that it must retrieve the firearm, as specified.
- Require that the DOJ, if it is unable to ascertain the purchaser’s eligibility to possess a firearm as specified, and after notifying the dealer of that fact, to notify the purchaser of the its inability to ascertain the purchaser’s eligibility and explain the process by which the purchaser may obtain specified records and report inaccuracies on those records.
- Make other technical and clarifying changes.

5. Argument in Support

According to the Department of Justice, the bill’s sponsor:

Attorney General Bonta is pleased to support Assembly Bill 1406, which will ensure that firearms are only released to safe and law-abiding persons. AB 1406 would allow the Department of Justice (“DOJ”) to notify a dealer to delay a firearm transfer to a

⁷ *Id.* at 3.

⁸ See the DOJ’s opening brief here: [Campos_v_Bonta_Appellant's_Opening_Brief.pdf \(nationbuilder.com\)](#)

purchaser for up to 30 days in the event of a state of emergency that prevents the DOJ from completing a background check during the 10-day waiting period. An active state of emergency would be limited to extraordinary events, which are beyond the control of the DOJ, including pandemics, natural disasters, and acts of war or terrorism.

During the COVID-19 pandemic in 2020, firearms sales nearly doubled. At the same time, the DOJ was facing unprecedented complications in processing those background checks within the 10-day limit caused by court and government office shutdowns and staffing shortages due to the Governor's proclamation of state of emergency. This meant that some background checks were completed after the 10-day waiting period. [...]

Making certain that guns do not fall into the wrong hands is a goal we all share. Proper vetting of all purchasers is a critical part of that process. AB 1406 provides commonsense flexibility when emergency circumstances warrant a delay in processing background checks, while preserving the rights of potential firearm owners to take possession of their guns within a reasonable amount of time.

6. Argument in Opposition

According to Gun Owners of California, Inc.:

Given DOJ's time-consuming record on approving eligibility, this legislation appears as if it would give them yet another opportunity to deny responsible citizens from securing a firearm and to deflect criticism of not being able to do their job in a timely manner. Unfortunately, such delays are a regular occurrence. Oftentimes, both gun and ammunition purchasers are notified of a "hold" and upon the immediate submission of a second background check – *for which they must pay again* - they pass.

AB 1406 will not yield the intended results of solving the problem of firearm misuse. Rather, this provides unnecessary cover for a Department that seems intent on providing obstacles to lawful, responsible citizens who simply yearn to protect their families and homes. The safety of Californians is at the very foundation of our mission, and it has been our consistent goal to work toward common sense solutions regarding the issue of crime and firearm ownership; this can be done, however, without sacrificing our Constitutional rights and the ability of the law abiding to protect their families.

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