
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1669 **Hearing Date:** July 9, 2019
Author: Bonta
Version: June 20, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Gun Shows and Events*

HISTORY

Source: California Department of Justice

Prior Legislation: SB 580 (Jackson), 2013, held in Assembly Appropriations.
SB 140 (Leno), Ch. 2, Stats. of 2013
SB 819 (Leno), Ch. 743, Stats. of 2011

Support: Bay Area Student Activists; California Academy of Family Physicians; California Academy of Preventive Medicine

Opposition: California Sportsmen's Lobby; Gun Owners of California; National Shooting Sports Foundation; Outdoor Sportsmen's Coalition of California; Safari Club International; Safari Club International Foundation

Assembly Floor Vote: 49 - 22

PURPOSE

The purpose of this bill is to update existing law by applying the same gun show regulations that already apply to firearms dealers to ammunition vendors, and reduce the amount of the Dealers' Record of Sale (DROS) fee to \$1 and remove the authority of the Department of Justice (DOJ) to spend the proceeds of the fee on specified regulatory costs. The bill also authorizes DOJ to charge an additional fee to the DROS fee in the amount of \$31.91 per firearms transaction to cover specified costs related to firearms regulatory enforcement.

Existing law authorizes DOJ to require the dealer to charge each firearm purchaser a DROS fee not to exceed fourteen dollars (\$14), and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen Code § 28225, subd. (a).)

Existing law states that the DROS fee shall be no more than what is necessary to fund specified costs to the DOJ. (Pen Code § 28225, subds. (b) and (c).)

Existing law authorizes DOJ to require each dealer to charge each firearm purchaser or transferee a fee not to exceed one dollar (\$1) for each firearm transaction, and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen. Code, § 23690.)

Existing law authorizes DOJ to require firearms dealers to charge each person who obtains a firearm a fee not to exceed five dollars (\$5) for each transaction, and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen. Code, § 28300.)

Existing law authorizes a certified instructor of the firearm safety test to charge a fee of twenty-five dollars (\$25), fifteen dollars (\$15) of which is to be paid to DOJ to cover its costs in carrying out and enforcing firearms laws. (Pen. Code, § 31650.)

Existing law authorizes DOJ to allow a certified instructor to not to exceed fifteen dollars (\$15), for a duplicate firearm safety certificate. (Pen. Code, § 31660.)

Existing law requires the producer of a gun show or event, prior to the show or event, upon written request by the law enforcement agency with jurisdiction over the facility, to provide a list of all persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms, as specified. (Pen. Code § 27205, subd. (a).)

Existing law requires the producer of a gun show or event, for every day the gun show or event operates, upon written request by the law enforcement agency, to provide an accurate, complete, and current list of the persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms. (Pen. Code § 27205, subd. (b).)

Existing law states that the following information may be requested by the law enforcement agency in regards to any firearms dealer:

- 1) The vendor's complete name; and
- 2) A driver's license or identification card number. (Pen. Code § 27205, subd. (d).)

Existing law states that the producer and facility's manager of a gun show or event shall prepare an annual event and security plan and schedule that shall include, at a minimum, the following information for each show or event:

- 1) The type of show or event, including, but not limited to, antique or general firearms; and
- 2) The estimated number of vendors offering firearms for sale or display. (Pen. Code § 27210.)

Existing law requires that within seven calendar days of the commencement of a gun show or event, but not later than noon on Friday for a show or event held on a weekend, the producer shall submit a list of all prospective firearms dealers to the Department of Justice (DOJ) for the purpose of determining whether these prospective vendors and designated firearms transfer agents possess valid licenses and are thus eligible to participate as firearms dealers at the show or event. (Pen. Code § 27220, subd. (a).)

Existing law requires DOJ to examine its records and if it determines that a vendor's license is not valid, it shall notify the show or event producer of that fact before the show or event commences. (Pen. Code § 27220, subd. (b).)

Existing law prohibits a firearms dealer who fails to cooperate with a producer of a gun show or event, or fails to comply with gun show regulations, from participating in the show or event. (Pen. Code § 27225.)

Existing law requires every producer of a gun show or event to have a written contract with each gun show vendor selling firearms at the show or event. (Pen Code § 27235.)

Existing law requires the producer of a gun show or event to post signs in a readily visible location at each public entrance to the show containing the following notices, among others:

- 1) This gun show follows all federal, state, and local firearms and weapons laws, without exception; and
- 2) Persons possessing firearms at this facility must shall have in their immediate possession government-issued photo identification, and display it upon request to any security officer or any peace officer, as defined. (Pen. Code, § 27240, subd. (a).)

Existing law requires the show producer to post, in a readily visible location at each entrance to the parking lot at the show, signage that states: “The transfer of firearms in the parking lot of this facility is a crime.” (Pen. Code, § 27240, subd. (b).)

Existing law requires all gun show or event vendors to certify in writing to the producer that they, among other things:

- 1) Will not display, possess, or offer for sale any firearms, knives, or weapons for which possession or sale is prohibited;
- 2) Acknowledge that they are responsible for knowing and complying with all applicable federal, state, and local laws dealing with the possession and transfer of firearms; and,
- 3) Will process all sales or transfers of firearms through licensed firearms dealers as required by state law. (Pen. Code § 27305.)

Existing law requires each ammunition vendor, before commencement of a gun show or event, to provide to the producer all of the following information relative to the vendor, the vendor’s employees, and other persons, compensated or not, who will be working or otherwise providing services to the public at the vendor’s display space:

- 1) The person’s complete name;
- 2) The person’s driver’s license or state-issued identification card number; and,
- 3) The person’s date of birth. (Pen. Code, § 27320.)

Existing law provides that any firearm carried onto the premises of a gun show or event by members of the public shall be checked and secured in a manner that prevents the firearm from being discharged. (Pen. Code, § 27340, subd. (a).)

Existing law provides that an identification tag or sticker shall be attached to the firearm prior to the person being allowed admittance to the show and the identification tag or sticker shall state that all firearm transfers between private parties at the show or event shall be conducted through a licensed dealer or firearm dealer in accordance with applicable state and federal laws. (Pen. Code, § 27340, subd. (b).)

Existing law provides that all firearms carried onto the premises of a gun show or event by members of the public shall be checked, cleared of any ammunition, secured in a manner that prevents them from being operated, and an identification tag or sticker shall be attached to the firearm, prior to the person being allowed admittance to the show. The identification tag or sticker shall state that all firearms transfers between private parties at the show or event shall be conducted through a licensed dealer in accordance with applicable state and federal laws. The person possessing the firearm shall complete the following information on the tag before it is attached to the firearm:

- 1) The gun owner's signature;
- 2) The gun owner's printed name; and,
- 3) The identification number from the gun owner's government-issued photo. (Pen. Code, § 27340.)

This bill updates existing law by requiring ammunition vendors who participate in guns shows to follow the same regulations as that are currently required of firearms dealers who participate in gun shows.

This bill would reduce the DROS fee that a firearm dealer may charge to \$1 from the existing \$14 fee.

This bill authorizes the DOJ to charge a new fee of \$31.19 on a firearms-related transaction in order to cover the costs of the DOJ's firearms-related regulatory and enforcement activities.

This bill establishes the Dealers' Record of Sale Supplemental Account of the General Fund, into which proceeds of the new fee are to be deposited and made available, upon appropriation by the Legislature, for expenditure by the DOJ to offset the costs of its firearms-related regulatory and enforcement activity.

This bill allows the DOJ to increase the fee at a rate not to exceed any increase in the California Consumer Price Index.

COMMENTS

1. Need for This Bill

According to the author:

Currently, firearms dealers must adhere to a set of standards to be eligible vendors at gun shows or gun show events. Among other things, they are required to notify DOJ, provide identification and other information, and certify that any firearm transfer will be conducted through a licensed firearms dealer, ensuring that the purchaser undergoes a background check. Ammunition vendors who do not sell firearms, however, are not required to adhere to those requirements prior to participating in gun shows.

This discrepancy has caused an inconsistency in the way in which firearms and ammunition vendors are treated at California gun shows. Independent ammunition vendors, those that only sell ammunition and are federally licensed, can sell ammunition at gun shows in California without being required to obtain

the same state licenses that are required of California based vendors. Additionally, gun show organizers and promoters are exempted from having to include independent ammunition vendors in the list of expected dealers that must be reported to the Department of Justice within a week of the event. Knowing who is expected at a gun show gives DOJ the ability to prepare for possible enforcement actions against vendors that have a history of problematic practices such as allowing straw purchases. This bill would eliminate the discrepancy by requiring ammunition vendors to abide by the same requirements as firearms dealers.

Over the last several years, program activities have been initiated and funded from the DROS Special Account (DROS Fund) that were unrelated to previous DROS responsibilities and with no compensating increase in the base DROS fee to increase available revenues. There are currently General Fund proposals included in the Governor's Budget to offset some of the cost increases to the DROS Fund, but they do not fully cover the unfunded needs. Consequently, the DROS Fund balance will continue to decline, and without action, become negative in FY 2020-21. The proposed base fee increase will create sufficient revenues to the fund to avert the need for additional General Fund or significant programmatic service reductions. Additionally, the proposal will provide the department the authority to adjust the DROS fee.

In 1982 the Legislature first authorized DOJ to charge a DROS fee the Department set the fee at \$2.25 per transaction. The Legislature also generally limited use of the DROS fee to covering the cost of background checks. The relevant statute (Stats. 1982, Ch. 327) stated that "the Department of Justice may charge the dealer a fee which it determines to be sufficient to reimburse the department for the cost of furnishing this information" (i.e., the personal information provided by the purchaser of a firearm to DOJ so that it may perform the background check). The Legislature further directed that "all money received pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by to offset the costs incurred pursuant to this section."

Chapter 327 of the Statutes of 1982 established Penal Code (PC)§ 12076 and the Dealers' Record of Sale Fund Special Account (DROS Account) and explicitly stated the allowed uses of the DROS Account. That statute allowed the funds to be spend on the costs related to:

- Activities related to carrying out the Article in which it is contained, primarily background checks, the primary purpose of the DROS Fee;
- Security and safety inspections of facilities where guns are stored;
- Storage of information related to personal firearm importers;
- Maintenance of a centralized file of federal firearms dealers
- Public education; and,
- The retesting of handguns found to be unsafe.

Over the next nine years, DOJ periodically increased the fee. As of December 1991 the Legislature had expanded use of the fee to cover the costs of complying with additional laws, not just the cost of background checks. In 1995, PC§ 28225 established the DROS fee at \$14 and allowed for the fee to be increased annually by the Consumer Price index as compiled and reported by the Department of Industrial Relations. The fee has been raised one time to its current level of \$19 per transaction in October of 2004.

The Legislature established the Armed Prohibited Persons System in 2001 in SB 950 (Stats. 2001, Ch. 944). The APPS program consists of an electronic system that produces a list of armed prohibited persons by cross-referencing firearms information databases with other databases containing records regarding persons prohibited from owning firearms. More specifically, on a daily basis the APPS system reconciles AFS –the database containing sales information retained by DOJ as a result of the DROS process – against databases housing California's criminal history, domestic violence restraining orders, wanted persons, and the On-Line Mental Health Firearms Prohibition Reporting System. The APPS program became operational in 2006 and was funded with GF. In 2011, to help with the GF revenue crisis, the Legislature passed statutory language, SB 819 (Stats. 2011, Ch. 743) intended to allow DROS fees to support the APPS program.

The bill is a critical step towards ensuring that the DOJ has the necessary resources to meet its responsibilities under the laws that are funded by the DROS fees. Though the bill has gone through a number of iterations, the effect remains the same. The bill raises the statutory fee for purchasing a firearm to \$32.19 where the Department of Justice has calculated this is the exact figure needed to keep the DROS account solvent. The proposed increase contemplates only those programmatic requirements for regulatory and enforcement activities related to and associated with the background checks required for sales and purchases or other applications for changes in the ownership of a firearm. The increase does not contemplate the fee that would be required to also support the Armed and Prohibited Persons System's programmatic requirements, the funding of which is an issue being separately addressed in the Budget.

2. Proposition 63

Proposition 63, the Safety for All Act, passed in 2016 by the people of California, contained several provisions related to firearms and ammunition. Among other things, it required sales of ammunition to be conducted by or processed through a licensed dealer so that a background check could be conducted. Prop 63 also defined the term "ammunition vendor" and established that a current firearms dealer was to be automatically considered an "ammunition vendor."

Currently, firearms dealers must adhere to a set of standards to be eligible vendors at gun shows or gun show events. Among other things, they are required to notify DOJ, provide identification and other information, and certify that any firearm transfer will be conducted through a licensed firearms dealer, ensuring that the purchaser undergoes a background check. Ammunition vendors who do not sell firearms, however, are not required to adhere to those requirements prior

to participating in gun shows.

This discrepancy has caused an inconsistency in the way in which firearms and ammunition vendors are treated at California gun shows. Independent ammunition vendors, those that only sell ammunition and are federally licensed, can sell ammunition at gun shows in California without being required to obtain the same state licenses that are required of California based vendors. Additionally, gun show organizers and promoters are exempted from having to include independent ammunition vendors in the list of expected dealers that must be reported to the Department of Justice within a week of the event. Knowing who is expected at a gun show gives DOJ the ability to prepare for possible enforcement actions against vendors that have a history of problematic practices such as allowing straw purchases. This bill would eliminate the discrepancy by requiring ammunition vendors to abide by the same requirements as firearms dealers.

3. Dealer of Record Sale Fee (DROS)

The DROS fee was first established in 1982 in order to cover DOJ's cost of performing a background check on firearms purchasers. The initial DROS Fee was \$2.25. Over the years, the amount of the DROS Fee increased, and so did the number of activities that it funded. In 1995, the Legislature amended the statute to fix the DROS Fee at \$14 and allowed it to be adjusted to account for inflation. In 2004, the Department adopted regulations adjusting the fee to \$19. The DROS fee is one of several fees that is attached to the purchase of a new firearm. In addition, there is a \$1 firearm safety fee, and a \$5 firearms safety and enforcement fee.¹

The DROS fee is implemented in two separate statutes, one that allows DOJ to charge the fee to the dealer for each firearms purchased and another that effectively allows the firearms dealer to pass that cost along to the purchaser. This bill would increase that fee to \$32.19. According to DOJ, this change is necessary because over the last several years, program activities have been initiated and funded from the DROS Special Account (DROS Fund) that were unrelated to previous DROS responsibilities without a corresponding increase to the DROS Fund. DOJ asserts that the DROS fund will be empty by fiscal year 2020-21. They further state that the \$32.19 fee is calculated to create sufficient revenues to avert the need for additional General Fund or significant programmatic service reductions.

Although the initial DROS fee was only intended to cover the cost of background checks, subsequent legislation has contemplated that DROS funds be used for other purposes, such as enforcement of the Armed Prohibited Persons System (APPS.) Specifically, SB 819 (Leno), Statutes of 2011, allowed DOJ to utilize the DROS Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System. Under the provisions of this bill, DOJ would be authorized to adjust the DROS fee in order to fund any firearms activity that is required of DOJ for which there is no sustainable source of funding.

Recently, the DROS fee was challenged in court by a group of plaintiffs made up of gun owners and enthusiasts. (*Gentry v. Becerra*, (Mar. 4, 2019, No. 34-2013-80001667) Sacramento Sup. Ct.) The plaintiffs argued that DROS fee was not properly calculated, that DOJ was using DROS funds outside of their statutory authority, and that the fee was in fact a tax, thus violating the California Constitution. (*Id.* at 1.) Ultimately the superior court ruled against the plaintiffs,

¹ <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/pdf/firearms-fees.pdf>.

finding that the DROS fee was a reasonable approximation of the costs of the government-provided regulatory services and that the DROS fee was not a tax. (*Id.* at 13.) Because this bill would both increase the DROS fee and expand the activities for which that fee can be used, it is likely to subject the fee to renewed legal challenges.

4. Creation of a Supplemental Fund for Background Checks

This bill creates a Dealers' Record of Sale Supplemental Subaccount (Supplemental Fund) within the DROS Special Account of the General Fund to be available upon appropriation by the Legislature for expenditure by DOJ to offset the reasonable costs of firearms-related regulatory and enforcement activities. The bill permits DOJ to require a dealer to charge each firearm purchaser a fee in the amount of \$31.19 upon the purchase of a firearm. Additionally, this bill would allow the DOJ to increase the fee at a rate not to exceed any increase in the California Consumer Price Index.

According to the sponsor of the bill, DOJ, the purpose of this provision is to permit the DOJ to use this Supplemental Fund for background checks. Under existing law, the DROS fee may be used for reimbursing costs to local mental health facilities, the Department of State Hospitals, local law enforcement, and the Department of Food and Agriculture for mandated costs associated with reporting, storing, tracking, and posting records and information related to firearms prohibitions. (Pen. Code, § 28225, subs. (b)(1)-(11).) Under the rubric created by this legislation, the new \$1 DROS fund would be used for these purposes. The new Supplemental Fund, which imposes a \$31.19 fee, would be used by DOJ for firearms enforcement purposes and background checks.

According to calculations used in budget projections, about \$20.6 million in revenues is estimated to be deposited into the DROS Special Account in 2018-2019 to support about \$24 million in expenditures. The DROS Special Account has experienced operational shortfalls since 2012-2013. This year, in an effort to avoid further shortfalls, DOJ enforcement of the Armed Prohibited Persons System (APPS) was moved to a general fund allocation in the budget.

Even though the DROS Special Account has now received assistance in an effort to make it more solvent going forward, DOJ is on the precipice of an increased workload in terms of background check mandates. On July, 1, 2019, the time this analysis is being drafted, California is imposing mandated background checks for ammunition sales pursuant to the requirements of Proposition 63. Under the new background check procedures, customers will have to receive a background check every time they make an ammunition purchase, and pay a \$1 fee. Those customers who don't already have their information in the DOJ system for the point-of-sale screenings will have to pay up to \$20 for an initial screening. It is unclear whether these fees will be sufficient to compensate DOJ for the additional workload imposed by ammunition background checks.

5. Argument in Support

According to the California Department of Justice:

Attorney General Becerra is pleased to sponsor AB 1669, a bill that addresses the inconsistency with which firearms and ammunition vendors at California gun shows are treated under state law. The bill would also grant the Department of Justice (DOJ) the authority to adjust the Dealer Record of Sale (DROS) fee.

Proposition 63, the Safety for All Act, passed in 2016 and among several provisions related to firearms and ammunition, required sales of ammunition to be conducted by or processed through a licensed dealer. Unfortunately, not all vendors were covered by the resulting law. “Independent ammunition vendors” – those that only sell ammunition, are federally-licensed, and are based outside of California – can sell ammunition at gun shows without being required to obtain the same state licenses that are required of California-based vendors. AB 1669 closes this loophole by requiring any entity selling ammunition in the state to be licensed by the state.

Another loophole allows a gun show organizer or promoter from having to include independent ammunition vendors in the list of expected dealers that must be reported to the DOJ within a week of the event. Knowing who is expected at a gun show gives DOJ the ability to prepare for possible enforcement actions against vendors that have a history of problematic practices such as allowing straw purchases. AB 1669 closes the loophole and requires independent ammunition vendors to be included in the report to the DOJ.

Finally, AB 1669 would grant DOJ the authority to adjust the DROS fee. The DROS fee is collected each time a firearm is sold by a licensed dealer in California and is meant to address the cost of the background check as well as other program costs. Current law sets the DROS fee at \$14.00 and allows for the fee to be increased annually by the Consumer Price index as compiled and reported by the California Department of Industrial Relations. The fourteen dollars was established in 1995 and has been raised only once – to \$19.00 in 2004.

Over the past several years numerous bills were signed into law that drew from the DROS Special Account. During that time there were no compensating increases in the base DROS fee to cover the resulting increase in DOJ’s workload. Even if the DOJ had raised the fee each year since 2004 to account for any increase in the Consumer Price index, there would still be a shortfall of \$5.38 per transaction. The Governor’s 2019-20 Budget recognized the need to stabilize funding for DROS programs and included \$6.9 million in General Funds to address some of the recent workload increases. Unfortunately, this amount does not fully cover the unfunded workload.

AB 1669 proposes to raise the base DROS fee to \$32.19 to fund current costs. Without this bill, the DROS fund will continue to decline and will become negative in Fiscal Year 2020-21. The proposed adjustment will create sufficient revenues to avert the need for additional General Fund or significant service reductions. In anticipation of future legislation, AB 1669 would also provide DOJ with the authority to readjust the fee as new laws that are funded by the DROS Special Account take effect.

6. Argument in Opposition

According to the California Sportsman's Lobby:

This is to inform you of the continued opposition of CSL to AB 1669 that would dramatically increase the total Dealers Record of Sale (DROS) fees and needlessly change the DROS fee structure as provided for in existing Penal Code Sections 28225, 28230, 28235, and 28240.

This proposal would raise the total DROS fee amount paid by firearms purchasers to @32.19, an increase of 69% over the current DROS fee of \$19.00 (the existing base fee of \$14.00 as adjusted by the California Consumer Price Index).

It would do so by moving some of the current DROS fee cost items [regulatory and enforcement, section 28225 to the proposed new section (28233) and imposing an additional new "fee" of \$31.19.

The bill as now amended reduces the current \$14.00 DROS fee provided for in section 28225 to \$1.00 but increases the total amount to be paid to \$32.19 by adding another and much higher in the new section 28233.

This would be a net fee increase of \$13.19 that would be paid by a purchaser of a firearm. Yet, there is nothing new in DOJ program costs that would justify the additional "fee."

As proposed in AB 1669, section 28225 would still have ten subject areas of duties for DOJ to perform. However, the bill would reduce the current level of DROS fee funding for these duties combined to just \$1.00. If enacted, DOJ would no doubt soon ask the legislature for more funding via yet another increase in the DROS fee. Such a request from DOJ is considered inevitable if AB 1669 as proposed becomes law.

Thus, AB 1669 would create a situation that would likely result in even higher future fees being proposed for lawful purchasers of firearms.

There has been no rational justification related to the purchase of a firearm by a lawful individual offered for such a massive increase in fees. It appears completely arbitrary.

The total fees paid by a prospective firearm purchaser or other transferee are already very high. AB 1669 would increase them from \$25.00 to \$38.19. This is clearly an excessive amount of increase, especially since no additional services would be received by the fee payer.