
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1794 **Hearing Date:** June 4, 2019
Author: Jones-Sawyer
Version: March 21, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Unsafe Handguns: Exemptions*

HISTORY

Source: California Statewide Law Enforcement Association

Prior Legislation: AB 1872 (Voepel), Ch. 56, Stats. of 2018.
AB 2165 (Bonta), Ch. 640, Stats. of 2016.
AB 892 (Achadjian), Ch. 203, Stats. of 2015.

Support: Unknown

Opposition: One individual

Assembly Floor Vote: 76 - 0

PURPOSE

Exempts various law enforcement entities or sworn officers of those entities from the prohibitions against the sale or purchase of an “unsafe” handgun.

Existing law requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code § 32000, subd. (a).) Specifies that this section shall not apply to any of the following:

- 1) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this state;
- 2) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section;

- 3) Firearms listed as curios or relics, as defined in federal law; and,
- 4) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person; (Pen. Code, § 32000, subd. (b).)

Existing law specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

Existing law defines "unsafe handgun" as "any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified." (Pen. Code, § 31910.)

Existing law requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010.)

Existing law requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)

Existing law provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code, § 32015, subd. (b)(1).)

Existing law provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

Existing law states that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:

- 1) The manufacturer petitions the AG for reinstatement of the handgun model;
- 2) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;

- 3) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;
- 4) The three handguns samples shall only be tested once. If the sample fails it may not be retested;
- 5) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;
- 6) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,
- 7) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subs. (a)-(g).)

Existing law provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

- 1) Finish, including, but not limited to bluing, chrome plating or engraving;
- 2) The material from which the grips are made;
- 3) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm; and,
- 4) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

Existing law requires any manufacturer seeking to have a firearm listed as being similar to an already listed firearm to provide the DOJ with the following:

- 1) The model designation of the listed firearm;
- 2) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns; and,
- 3) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

This bill exempts the following agencies or sworn members of these entities that have satisfactorily completed the firearms portion of the basic training course prescribed by the Commission on Peace Officer Standards and Training (POST):

- 1) The California Horse Racing Board;
- 2) The State Department of Health Care services;
- 3) The State Department of Public Health;
- 4) The State Department of Social Services;
- 5) The Department of Toxic Substances Control;

- 6) The Office of Statewide Planning and Development;
- 7) Investigators of the Department of Business Oversight;
- 8) The Chief and coordinators of the Law Enforcement Branch of the Office of Emergency Services;
- 9) Lottery security personnel assigned to the California State Lottery Commission;
- 10) The Franchise Tax Board;
- 11) Investigators of the office of Protective Services of the State Department of Developmental Services; and,
- 12) Firefighters and Security Guards of the Military Department.

COMMENTS

1. Need for This Bill

According to the author:

The Department of Justice (DOJ) keeps an up-to-date roster of handguns (roster) deemed safe and appropriate for use within the state. To be listed on the roster, a handgun must pass a DOJ laboratory safety test and the manufacturer must pay an annual listing fee.

However, when a manufacturer decides to no longer pay the annual listing fee, the handgun is no longer listed on the roster, and thus deemed “unsafe.” This can be particularly disruptive for agencies that have already purchased a handgun previously deemed “safe.”

To address the unique circumstances of departmental peace officers, California established Section 32000 of the Penal Code in 2001. This section provides a list of agencies that may purchase non-roster firearms for use in the discharge of their official duties. Unfortunately, the existing list of exempt agencies is not comprehensive, leaving the following agencies off the list: investigators from the Department of Business Oversight, the chief and coordinators of the Law Enforcement Branch of the Office of Emergency Services, investigators of the Office of Protective Services of the State Department of Developmental Services, and firefighters and security guards of the Military Department, among others.

California’s roster of safe handguns exists so that law enforcement officers, and the public, can identify which guns have passed rigorous Department of Justice lab tests, and more importantly, which guns have not passed those lab tests. To keep a weapon on the roster of safe handguns, a manufacturer must also pay a small fee annually. Unfortunately, many law enforcement agencies and state agencies find themselves making large handgun purchases only to find that manufacturers are not paying the annual fee to keep a gun on the roster. This

means that our state officers are out of compliance with state law, and must make new, costly orders, because gun manufacturers are refusing to pay the annual fee. The state already makes exempts various state law enforcement officers due to these circumstances. However, the list of exempt entities is not comprehensive. AB 1794 adds a number of the remaining law enforcement entities and state agencies to the list of exempt entities so that they can continue to use safe handguns even if a manufacturer is unwilling to renew the guns place on the roster.

2. Unsafe Handgun Law

SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

- 1) *Required Safety Device*: The Safe Handgun Law requires a revolver to have a safety device that, either automatically in the case of a double-action firing mechanism or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.
- 2) *Firing Test*: In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.
- 3) *Drop Test*: The Safe Handgun Law provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer.

SB 489 (Scott), Chapter 500, Statutes of 2003, added to the unsafe handgun law requirements for semiautomatic pistols that became effective in 2006 and 2007. The legislation requires that for a new semiautomatic center-fire pistol firearm to be added to the roster it has to be equipped with a chamber load indicator¹ and a magazine disconnect² (if it has a detachable magazine). The

¹ A chamber load indicator is a device that plainly indicates that a cartridge is in the firing chamber. (Penal Code § 16380.)

² A magazine disconnect is a mechanism that prevents a semiautomatic pistol from operating when a detachable magazine is not inserted in the semiautomatic pistol. (Penal Code § 16900.)

legislation also requires that all semiautomatic rimfire pistols, with a detachable magazine, have a magazine disconnect. All firearms that were on the not unsafe handgun list prior to the effective dates were essentially grandfathered in. Those who supported SB 489 argued:

It is just common sense that handgun should include a chamber load indicator that makes it clear whether the weapon is loaded. Since cheap disposable cameras can clearly count down the number of pictures left, it is inexcusable that handguns do not indicate when a bullet is in the chamber. Magazine safety disconnects would also greatly reduce the number of unintentional accidental shootings by ensuring that when the magazine is removed the gun will not fire.

(http://leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-500/sb_489_cfa_20030630_103204_asm_comm.html.)

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added “microstamping” as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010, “provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.” As discussed above, the Department of Justice issued the certification on May 17, 2013. Like the other provisions, the “microstamping” requirement did not apply to firearms already on the roster. The author of AB 1471 provided the rationale for the additional requirement,

AB 1471 will help law enforcement identify and apprehend armed gang members before they inflict more harm on others, including innocent bystanders. In instances of drive-by shootings, where the only evidence at the crime scene may be a spent cartridge case, law enforcement could quickly obtain a critical lead.

(http://leginfo.ca.gov/pub/07-08/bill/asm/ab_1451-1500/ab_1471_cfa_20070625_130933_sen_comm.html.)

Current law exempts handguns from the safety testing requirements that are sold to, or purchased by, the Department of Justice, any police department, any sheriff’s official, any marshal’s office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney’s office, or the military. Sworn members of those agencies are also exempted from the ban on buying or selling handguns that are not on DOJ’s “not unsafe” handgun roster. The law, additionally, allows sworn members of these agencies to sell an off-roster handgun to someone who is not exempt.

Until recently, a number of law enforcement agencies, and officers, have been able to purchase off-roster firearms. There was, evidently, some confusion among dealers as to who qualifies for the roster exemptions. When this was discovered by DOJ, the dealers were issued cited and DOJ reminded the dealers that only listed law enforcement agencies are allowed to purchase off-roster firearms. DOJ, additionally, added the following to their website:

The following agencies may purchase non-roster firearms for use in the discharge of their official duties:

Department of Justice

A police department

A sheriff's official

A marshal's office

The Department of Corrections and Rehabilitation

The California Highway Patrol

Any district attorney's office

Any federal law enforcement agency

The military or naval forces of this state or of the United States (Pen. Code, § 32000, subd. (b)(4).)

Penal Code section 32000 does not prohibit the sale to, or purchase by, sworn members of the above agencies of a handgun.

([http://oag.ca.gov/firearms/exemptpo.](http://oag.ca.gov/firearms/exemptpo))

3. Failure to Pay a Fee may Result in a Weapon Being Deemed "Unsafe"

DOJ deems some weapons to be "unsafe" because a particular gun manufacturer has not paid the appropriate fees and/or submitted the proper paperwork. The weapons themselves may be "safe" under the standards listed above, and perfectly capable of passing all three firing tests, but they are deemed "unsafe" for purposes of categorization. Many law enforcement agencies still use these weapons and there are numerous exemptions to the "unsafe" handgun law that allows those agencies to continue to use and possess them. This bill will add additional agencies to the exemptions list in order to avoid the cost of replacing firearms that are technically considered "unsafe" despite being capable of complying with the firing tests.

4. Argument in Support

According to the California Statewide Law Enforcement Association:

AB 1794 will extend the exemption provided in Penal Code §32000 to peace officers serving and protecting communities throughout California, and who have completed the requisite firearms training and currently carry non-roster firearms.

In 2001, Penal Code §32000 created a list of non-exempt agencies who may purchase non-roster firearms for use in the discharge of their official duties. Questionably, certain trained peace officers and law enforcement personnel were left off the list. These peace officers are often required to participate in mutual aid situations, task forces, sting operations and arrests. These high-risk situations require that these officers be properly armed.

In years past the Department of Justice permitted these agencies and departments to acquire these firearms for their public safety personnel. However, recent enforcement of the gun roster by the Department of Justice would require thousands of law enforcement to forfeit their guns. This legislation is necessary

because it will allow officers, who have gone through the appropriate training to carry and keep their ‘non-roster’ handguns, while on active duty. Thereby also not creating a new expense for the State to repurchase new firearms and to retrain these personnel on these new firearms. In particular, this bill will expand the unsafe handgun exemption to sworn officers within various state departments, including the California Horse Racing Board, the State Department of Public Health, the Department of Toxic Substances Control, Investigators at the Department of Business Oversight, and others whom have the necessary training to carry these particular handguns.

5. Argument in Opposition

According to Griffin Dix, Ph.D.:

My fifteen-year-old son was killed in 1994 with a handgun that lacked a prominent chamber loaded indicator. Since then I have been working to make handguns safer and reduce gun deaths and injuries.

The passage of Assembly member Rob Bonta’s bill AB 2165 in 2016 has already greatly increased the number of state employees allowed to purchase and sell to other state employees off-roster handguns that do not meet California’s safety standards. AB 1794 will increase this number, putting even more state employees at risk because of their access to unsafe handguns.

Many people do not realize how unsafe many handguns are. The primary reasons they are dangerous are:

- (1) The extremely light trigger pressure and (2) very short trigger pull on unsafe handguns make accidental discharge more likely.
- (3) They have no external manual “safety” to enable their users to make them temporarily “safe” and unable to fire.
- (4) They have no prominent chamber loaded chamber indicator to show when a round may still be in the chamber, even when the loaded magazine has been removed.
- (5) They have no magazine disconnect safety device to prevent a round in the chamber from firing when the magazine has been removed.

I am fully aware that sworn law enforcement officers, who are fully trained and re-trained, need the firearms they believe will best help them protect their communities and themselves. They are legitimately exempt from California’s handgun safety laws. But AB 1794 *allows too many additional individuals to be exempt from California’s handgun safety laws*, not only putting more state employees at risk but also increasing the number of unsafe handguns circulating in California.

Many of the newly exempt employees under Bill 1794 will not be full-time sworn law enforcement officers, and will not be required to complete the entire Police

Officer Standards and Training (POST). They will not be required to get re-trained every six months or so, as sworn law enforcement officers must. Without that mandated training and re-training, those newly entitled to own unsafe handguns will be at greater risk to themselves and others.

There have been many instances of sworn officers unintentionally firing their service weapons. Moreover, those with service weapons frequently take them home, and in some cases fail to lock them away. Also, officers' family members sometimes obtain the guns of officers and shoot themselves or others in gun suicides, homicides or unintentional shootings. Such mishaps are more likely if the firearms lack adequate safety features.

Although the exempt employees will be legally allowed to sell the unsafe handguns only to other exempt employees, some will be tempted to sell the off-roster unsafe handguns in private sales to civilians without background checks, since these handguns sell at high prices.

California law enforcement officers have already been found guilty of trafficking off-roster handguns to civilians. Enforcement of the prohibition on these gun sales may be lax. Officers may be reluctant to arrest other officers or retired ones who sell civilians these handguns. Do we want to turn government employees into gun traffickers?

I am deeply concerned that AB 1794 will facilitate the widening of the gun industry's backdoor into California for the sale of unsafe handguns.

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