
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1842 **Hearing Date:** May 31, 2022
Author: Rodriguez
Version: February 8, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: restocking fee*

HISTORY

Source: Author

Prior Legislation: SB 715 (Portantino), Ch. 250, Stats. of 2021
AB 2061 (Limon), Ch. 23, Stats. of 2020
SB 941 (Portantino, 2020), not heard in Senate Public Safety
AB 1064 (Muratsuchi, 2019), held in Assembly Appropriations
AB 1669 (Bonta), Ch. 736, Stats of 2019

Support: Brady Campaign; Brady Campaign California; March for Our Lives Action Fund;
Youth Alive!

Opposition: None known

Assembly Floor Vote: 65 - 0

PURPOSE

The purpose of this bill is to prohibit licensed firearms dealers from charging a restocking or other return-related fee of more than 5% of the purchase price of the firearm if the buyer decides to cancel the purchase during the 10-day waiting period, with an exception for special order firearms, as defined.

Existing law requires that the sale, transfer, or loan of a firearm be processed through a licensed firearms dealer, and requires a dealer who is unable to process a third party sale, transfer, or loan of a firearm, to return the firearm to the person making the sale, firearm, or loan. (Pen. Code, §§ 26500 & 28050)

Existing law provides that for a private party transfer of a firearm, the purchaser, transferee or person being loaned the firearm may be required by the dealer to pay a fee not to exceed \$10 per firearm. (Pen. Code § 28055(a).)

Existing law authorizes the Department of Justice (DOJ) to require the dealer to charge each firearm purchaser a fee not to exceed \$1, as needed to fund specified activities, 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(a).)

Existing law authorizes DOJ to charge a fee sufficient to reimburse it for each of the following but not to exceed \$14: actual costs associated with the preparation, sale, processing, and filing of specified reports. (Pen. Code, § 28230.)

Existing law authorizes DOJ to require a dealer to charge each firearm purchaser a Dealer Record of Sale (DROS) fee of \$31.19, which is deposited into the DROS Supplemental Subaccount and may be used to offset the reasonable costs of firearms-related regulatory and enforcement activities related to the sale, purchase, manufacturing, lawful or unlawful possession, loan, or transfer of firearms, as specified. (Pen. Code, § 28233.)

Existing law authorizes the DOJ to require each dealer to charge each firearm purchaser or transferee a fee not to exceed \$1 for each firearms transaction, except as specified, to support DOJ program costs related to the Firearms Safety Act. (Pen. Code §23690.)

Existing law authorizes the DOJ to require firearms dealers to charge each person who obtains a firearm a fee not to exceed \$5 for each transaction, except as specified, for deposit into the Firearms Safety and Enforcement Special Fund. (Pen. Code §28300.)

Existing law requires a DOJ background check to be performed on a firearm purchaser prior to delivery of the firearm. (Pen. Code, §§ 20205 and 28220.)

Existing law provides that no firearm shall be delivered within 10 days of the application to purchase, or within 10 days of any required correction to an application, or within 10 days of the submission of any required fees to the DOJ, whichever is latest. (Pen. Code, § 26815(a).)

Existing law provides for numerous restrictions, fees, and other regulations pertaining to the sale, lease, and transfer of firearms and ammunition, and prescribes criminal penalties for violations thereof. (Pen. Code, §§ 26500 – 28000.)

This bill provides that a licensed firearms dealer shall not charge a restocking or other return-related fee of more than 5 percent of the purchase price of the firearm if the buyer decides to cancel the purchase of the firearm during the 10-day waiting period imposed under existing law.

This bill exempts special order firearms from the prohibition against return-related fees exceeding 5 percent, and defines “special order” to mean a specific request by the buyer for the licensee to order a firearm that is not available to the licensee.

COMMENTS

1. Need for This Bill

According to the Author:

Existing law restricts a licensed firearm dealer from delivering a firearm within 10 days of the application to purchase to allow the Department of Justice to conduct a background check to determine if the purchaser is eligible to own or possess a firearm. This waiting period is also known as the cooling-off period – preventing purchasers from having immediate access to a firearm.

Existing law does not limit the restocking return-related fees if a purchaser decides to cancel a firearm purchase within the 10-day cooling-off period. Waiting period laws are critical tools for keeping communities safe since they ensure time elapses for temporary emotions to fade. Studies have shown that waiting period laws reduce firearm suicides by 7-11% and firearm homicides by nearly 17%. However, costly restocking fees deter purchasers who would like to cancel their order after having time to reconsider their purchase. This bill would limit the return-related fees a firearm dealer may charge to ensure a buyer who makes a safe and responsible decision to cancel a purchase does not find it financially burdensome.

2. Procedures for Purchasing a Firearm in California

California has some of the strictest firearm purchasing policies in the nation. Subject to narrow exceptions, existing law generally requires all firearm sales or transfers to be completed through a licensed dealer. When both parties to a sale or transfer are not licensed, licensed dealers act as intermediaries, who must conduct the required background checks and deliver the firearm to the transferee.¹ Only certain gun sales and transfers are exempt from participation by a licensed dealer, including infrequent transfers between immediate family members, certain government-sponsored transfers, transfers to historical societies, museums or institutional collections, and transfers to licensed firearms manufacturers and importers, among a few others.² Existing law includes several grounds for the forfeiture of a license to sell firearms if the various procedures prescribed by law are not followed.³

Background checks are a central component of firearm sales and transfers in California. Federal law requires federally licensed firearms dealers (known as “FFLs”) 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.⁴ 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.⁵ 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

¹ Penal Code §27545

² Penal Code §27850 et. seq.

³ Penal Code §26800 et. seq.

⁴ Penal Code §§28160, 28205

⁵ Penal Code §§ 26815, 27540, 28220

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."⁶

3. Firearm Return Policies and Effect of This Bill

Existing law does not require licensed dealers to accept returns of firearms and provide refunds to purchasers. However, if a licensed dealer, or any California retailer, does not accept returns, they must clearly display that policy at each cash register and sales counter, or at each public entrance, or on tags attached to each item sold under the policy, or on the retail seller's order forms.⁷ If a store violates this requirement, a purchaser can return the purchased item with proof of purchase for a full refund within 30 days.

Many licensed firearm dealers post their return, refund and exchange policy on their business website. By way of example, the refund and exchange policy of the Nor Cal Gun Vault reads, in part:

We do not accept returns or exchanges unless the item you purchased is defective. If you receive a defective item, please contact us via email [...] with details of the product and the defect. Further instructions will be provided if item is to be returned and/or exchanged. Upon receipt of the returned product, we will fully examine it and notify you via e-mail, within a reasonable period of time, whether you are entitled to a refund or a replacement as a result of the defect. If you are entitled to a replacement or refund, we will replace the product or refund the purchase price, using the original method of payment. If we receive the item in our store and you cancel your order. we will charge a 10% restock fee for regular stocked items and 35% for custom items.

Another apt example is the return policy of Red Rifle, located in Southern California, which reads in relevant part:

There is a 25% re-stocking fee associated with all cancellations and returns. Please take your time to inspect all firearms thoroughly BEFORE proceeding with the transfer. Once a new firearm is transferred to you it is considered used, even if unfired. Consequently, we cannot provide a full refund for new firearms once they have been transferred into your possession. Also, we DO NOT reimburse FFL transfer fees, DROS fees or FSC fees on returned items. Returns are ONLY accepted for merchandise found defective or incorrect immediately upon receipt. Red Rifle will provide YOUR CHOICE of a replacement item (pending availability) or full refund on all firearms and accessories found defective upon receipt.

A review of several firearm return policies by committee staff revealed that many California firearm dealers, like Nor Cal Gun Vault and Red Rifle, do not allow returns unless the firearm is found to be defective. Further, like Red Rifle, many dealers consider purchased firearms to be "used" immediately upon transfer to the purchaser, preventing a full refund. And even if a purchaser decides to return the firearm during the 10-day waiting period (during which time the dealer retains possession of the firearm), they would not be entitled to a return of the several mandatory background check and firearm safety fees imposed by DOJ (roughly \$40), and would

⁶ *Silvester v. Harris*

⁷ Civil Code §1723.

be subject to the dealer's restocking fee.⁸ For instance, for a dealer like Red Rifle that has a 25% restocking fee – which is not uncommon – a purchaser that decides to return a \$1000 firearm within the waiting period would be subject to fees totaling \$290.

Existing law does not limit these restocking and other return-related fees if a purchaser decides to cancel a firearm purchase within the 10-day cooling-off period. According to the author, “these costly fees create a disincentive for individuals who decide to return a firearm after they have had time to reconsider their purchase.” This bill limits the restocking and return related fees that may be imposed by licensed firearm dealers to 5% of the purchase price of the firearm, but exempts special order firearms, defined as a specific request by the purchaser for the dealer to order a firearm that is otherwise not available to the dealer.

4. Argument in Support

According to the Brady Campaign:

Existing law restricts a licensed firearm dealer from transferring a firearm within 10 days of the application to purchase. The 10-day waiting period allows the Department of Justice to conduct background checks to determine if the purchaser is eligible to own or possess firearms. The cooling-off period also prevents thoughtless acts of gun violence, including suicide, by delaying the instant access to firearms.

Studies have shown the cooling-off period reduces rates of firearm suicide by 7- 11% and homicide by roughly 17%. Therefore, firearm dealers should not deter individuals who decide to return a firearm by charging excessive fees after purchasers have had time to reconsider their purchase. This bill is a step forward in promoting public safety to protect our local communities from more senseless gun violence.

-- END --

⁸ The fees associated with the purchase of a firearm are generally passed on to the buyer and are non-refundable; these include the Dealer Record of Sale, or “DROS” fee, the Firearms Safety Act Fee, and the Safety and Enforcement Fee.