
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 228 **Hearing Date:** May 31, 2022
Author: Rodriguez
Version: January 24, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms*

HISTORY

Source: Author

Prior Legislation: AB 2061 (Limon), Ch. 273, Stats. of 2020
AB 1064 (Muratsuchi, 2019), held in Assembly Appropriations
SB 1100 (Portantino), Ch. 894, Stats. of 2018
SB 1177 (Portantino, 2018), vetoed by the Governor

Support: Youth ALIVE!

Opposition: None known

Assembly Floor Vote: 69 - 0

PURPOSE

The purpose of this bill is to require the Department of Justice (DOJ), beginning in 2024, to conduct inspections of licensed firearm dealers at least every three years, subject to exceptions. The bill also authorizes the DOJ to inspect a dealer that is also subject to a local inspection program, and specifies minimum sampling standards for the audit of dealer records during an inspection.

Existing law requires a person to hold a license in order to sell, lease or transfer a firearm. (Pen. Code, § 26500)

Existing law provides that the duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting licensees to sell firearms at retail within the city, county, or city and county. (Pen. Code, § 26705(a).)

Existing law provides that a license granted by the licensing authority is only valid for up to one year from the date of issuance. (Pen. Code, § 26705(c).)

Existing law requires a firearms dealer or licensee to meet all the following requirements:

- Have a valid federal firearms license;
- Have any regulatory or business license, or licenses, required by local government;
- Have a valid seller's permit issued by the State Board of Equalization;

- Have a certificate of eligibility issued by the DOJ, as specified;
- Have a license issued in a specified format; and,
- Be recorded in the DOJ's centralized list of licensees. (Pen. Code § 26700.)

Existing law provides that a person may request a certificate of eligibility from DOJ to sell, lease, or transfer firearms and that such a person shall be subject to an examination of all DOJ records and the records available to DOJ in the National Instant Criminal Background Check System (NICS) to determine that the person is not prohibited from possession, receiving, owning, or purchasing a firearm. (Pen. Code § 26710(a), (b).)

Existing law requires DOJ to issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited by state or federal law from possessing firearms. (Pen. Code § 26710(c).)

Existing law requires DOJ to keep a centralized list of all persons licensed to sell, lease or transfer firearms at retail. (Pen. Code § 26715.)

Existing law requires firearms dealers to secure their inventory in a secure facility on the business premises, with trigger locks, or within a locked, fireproof safe or vault when the licensee is not open for business. (Pen. Code § 26890.)

Existing law requires licensed dealers to maintain and make available to law enforcement a firearm transaction record, as specified. (Pen. Code § 26900.)

Existing law requires that persons who purchase a firearm in California must wait 10-days from the date of the purchase to undergo a background check and for the DOJ to process the purchase of the firearm. (Pen. Code §§ 26815, 27540.)

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.)

Existing law requires any person who purchases or receives a firearm to possess a valid firearm safety certificate, subject to specified exceptions. (Pen. Code §§ 31615, 31700.)

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

Existing law authorizes the DOJ to inspect firearms dealers in order to ensure compliance with these laws. (Pen. Code § 26720(a).)

Existing law authorizes the DOJ to assess an annual fee, not to exceed one hundred fifteen dollars (\$115), to cover the reasonable cost of maintaining the centralized list of licensees. (Pen. Code, § 26720(b).)

Existing law provides that firearms dealers in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law are exempt from the DOJ's fees that relate to

the cost of inspections. License applicants are responsible for providing evidence to the DOJ that the jurisdiction in which the business is located has the inspection program. (Pen. Code, § 26720 (c).)

Existing law requires the DOJ to maintain and make available upon request the number of inspections conducted and the amount of fees collected, as specified, exempted jurisdictions, number of dealers removed from the centralized list of licensees, and the number of dealers found to have violated specified provisions of law with knowledge or with gross negligence. (Pen. Code, § 26725.)

Existing law requires a firearms dealer to maintain and make available for inspection during business hours to any peace officer or DOJ employee a firearm transaction record, as defined. (Pen. Code §26900.)

This bill authorizes the DOJ to conduct inspections of firearms dealers at least every three years until 2024, at which time the DOJ is required to conduct inspections of all dealers at least once every three years.

This bill exempts from the inspection requirement dealers whose businesses are located in a jurisdiction that has adopted an inspection program to ensure compliance with firearms laws.

This bill authorizes the DOJ to inspect dealers who are otherwise exempt from mandatory inspections under the provision above.

This bill provides that inspectors of dealers shall include an audit of dealer records that includes a sampling of at least 25 percent but no more than 50 percent of each record type.

COMMENTS

1. Need for This Bill

According to the Author:

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is primarily responsible for conducting firearm dealer inspections. However, the Bureau's resources are limited. About 700 investigators perform unannounced compliance reviews across the nation. Over the years, federal laws have limited inspections and created more responsibilities for the Bureau. Though their inspection program aims to inspect a dealer once every three years, data reveals dealers are inspected about once every seven to ten years. As a result, states have created their own firearm dealer inspection programs to address the lack of compliance checks at the federal level.

An investigative report reviewed the inspection reports from 2015 to 2017 and found a pattern of "dealers outright flouting the rules, selling weapons to convicted felons and domestic abusers, lying to investigators and fudging records to mask their unlawful conduct". Despite receiving multiple warnings on different inspection visits, many of these dealers continue to operate. The investigative report found nearly half of the stores with violations transferred firearms without conducting a background check correctly or sold firearms to people who indicated on the background check

paperwork that they are prohibited from owning a firearm. These types of violations represent a firearm diverted into the illegal market. In the more egregious cases, firearm dealers *misplaced* or *lost* hundreds of firearms – a red flag for gun trafficking. With regular inspections, the state can ensure firearm dealers are following laws intended to keep our communities safe and prevent firearms from ending up in the hands of criminals.

Firearm dealers have a critical role in ensuring firearms do not end up in the hands of dangerous people or those prohibited by law from owning or possessing a firearm. These dealers are responsible for following laws intended to protect the public from criminal use of firearms. However, nearly a third of licensed firearm dealers inspected last year were violating federal, state or local laws. These violations represent a firearm diverted into the illegal market, which puts everyone at risk. Astonishingly, about 90% of crime guns are traced back to just 5% of licensed dealers. With regular inspections, California can ensure firearm dealers are following laws intended to keep our communities safe and prevent firearms from ending up in the hands of criminals.

2. Firearms Dealer Licensing and Recordkeeping in California

Federal law requires firearms dealers to obtain a license (also known as a “federal firearms license,” or “FFL”) through the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). According to the ATF, as of December 2021, there were 1,907 FFLs issued for firearms dealers and pawnbrokers in California, and a total of 9,167 FFLs in the state.¹ An FFL is necessary but not sufficient for obtaining a firearms dealer license in California. Additional requirements include any business license required by local government, a seller’s permit issued by the California Department of Tax and Fee Administration, a seller’s license issued by the local licensing authority of a local government, a certificate of eligibility (COE) issued by the DOJ (verifying that a background check has taken place), and being recorded on the DOJ’s centralized list of firearms dealers.² In California, only individuals that have obtained a valid license through the DOJ may lawfully sell, lease or transfer firearms within the state, subject to limited exceptions.³

Licensed firearm dealers are subject to a range of recordkeeping requirements. Many of these records must be electronically transmitted to the DOJ on a regular basis⁴, while others are retained by the licensee and must be made available during inspection.⁵ Critically, firearms dealers are required to electronically report records of sales and transaction to the DOJ (known as the Dealer Record of Sale, or DROS), and are required to keep a record of electronic transfer of information for each sale of a firearm, containing specific information on the purchaser, the firearm being sold, and the date of transfer.⁶ At least 14 different Penal Code sections establish recordkeeping or retention requirements related to firearms dealers.⁷

¹ “Report of Active Firearms Licenses – License Type by State Statistics.” *Bureau of Alcohol, Tobacco, Firearms and Explosives*. Posted 10 December 2021. <https://www.atf.gov/firearms/docs/undefined/ffltypebystate12-10-2021pdf/download>

² Penal Code §26700

³ Penal Code §26500; see Penal Code §§27850 et. seq. for exceptions related to private party transfer.

⁴ See Penal Code §28205(c).

⁵ See Penal Code §26900, for instance.

⁶ Penal Code §§ 28100, 28160.

⁷ See California Code of Regulations, Title 11, §4022(a)(2).

3. Firearms Dealer Inspections

Licensed firearms dealers in California are subject to inspections by both the state and federal government. FFLs are subject to random inspections by ATF officials to ensure compliance with federal, state and local laws and regulations, educate licensees on specific requirements associated with those laws, and review records that FFLs are required to maintain. In addition, federal inspectors conduct a complete physical inventory of a licensee's firearms and evaluate the licensee's internal controls and security measures. In 2020, the latest year for which there is complete data, the ATF conducted 5,283 inspections, out of approximately 133,000 FFLs nationwide. Of those inspections, 283 were carried out in California and yielded 35 reported violations, generally regarding federal regulations on reporting and recordkeeping.⁸ The latest record available show at least 1952 active FFLs in California as of January 2022.⁹

Existing California law permits, but does not require, the DOJ to conduct inspections of licensed firearm dealers to ensure compliance with relevant laws, including firearms transfer requirements, firearms dealer records and retention requirements, and firearms dealership facility requirements.¹⁰ Existing regulations provide that dealers must ensure that DOJ representatives have reasonable access to all transaction records, firearms inventory, security features, and all areas on the business premises.¹¹ Existing law also provides that the DOJ may charge dealers an annual fee to cover the costs of inspection (not to exceed \$115), but exempt from this fee requirement any dealer located in a jurisdiction with its own inspection program. As of October 2021, only four jurisdictions have a local inspection program: Chula Vista, Emeryville, San Carlos and Union City.¹² It should be noted that not all of these programs *require* that local law enforcement inspect gun dealers.¹³

This bill, commencing in 2024, requires DOJ to conduct inspections of all dealers at least once every three years, but exempts dealers located in jurisdictions with local inspection programs. However, under this bill, the DOJ is still authorized to inspect those dealers. Given the low percentage of California FFLs that are subjected to federal inspections (around 4%), and the scarcity of jurisdictions with a local inspection program, this bill's mandatory inspection requirement may increase overall compliance with laws and regulations that apply to state-licensed firearms dealers. However, with California's almost 2,000 licensees, state inspectors will need to inspect roughly 650 dealers per year, reflecting an inspection schedule that could diminish the rigor and effectiveness of any given inspection.

This bill also provides that inspections must include an audit of dealer records that includes a sampling of at least 25 percent but no more than 50% of each record type. While a partial records

⁸ "Firearms Compliance Inspections." *Bureau of Alcohol Tobacco, Firearms and Explosives*.

<https://www.atf.gov/firearms/compliance-inspections> ; "Firearm Compliance Inspection Results." *Bureau of Alcohol Tobacco, Firearms and Explosives*. <https://www.atf.gov/firearms/firearms-compliance-inspection-results>

⁹ <https://www.atf.gov/firearms/docs/undefined/ffltypebystate01-10-2022pdf/download> – this includes federally licensed firearm dealers and pawnbrokers, not other types of FFLs such as antique collectors, firearm and ammo manufacturers, and FFLs related to so-called "destructive devices."

¹⁰ Penal Code §26720(a); CCR Tit. 11, §4022(a).

¹¹ CCR Tit. 11, §4022(b).

¹² "Communities on the Move: Local Gun Safety Legislation in California." *Giffords Law Center to Prevent Gun Violence*. Updated 8 October 2021. <https://giffords.org/lawcenter/report/communities-on-the-move-local-gun-safety-legislation-in-california/>

¹³ Chula Vista, for instance, simply permits local law enforcement to inspect dealers at its discretion, while Emeryville requires periodic inspections by police.

audit is certainly a more reasonable objective than a full audit in light of the demanding inspection schedule DOJ will be required to maintain, it may still prove difficult to achieve given the range and volume of records licensees are required to produce and retain. The Author and Committee may wish to consider whether limiting and specifying the types of records DOJ is required to audit represents a more realistic objective.

4. Argument in Support

According to Youth ALIVE!:

Although the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is primarily responsible for conducting firearm dealer inspections, data has revealed their limited resources have resulted in inspections once every seven to ten years. Current law permits, but does not require, the State of California Department of Justice to conduct inspections of federal firearm licensees to ensure compliance with firearm laws. These inspections are critical to ensure firearms are not diverted into the illegal market and become a danger to our local communities.

Despite local advocacy in Oakland that successfully resulted in there being no gun stores within city limits, firearms still, flood the streets of our community. Data shows that 90% of crime guns (guns used in the commission of a crime or in the possession of individuals who are legally restricted from purchasing or owning a firearm) are sold by just 5% of gun dealers. These numbers point to a larger systemic failure to enforce the firearm laws we already have on the books, and a culture amongst irresponsible dealers that assumes impunity from these laws. With regular inspections, the state can ensure firearm dealers are adhering to commonsense laws intended to keep our communities safe and prevent firearms from ending up in the hands of a prohibited person.

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