
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 311 **Hearing Date:** May 31, 2022
Author: Ward
Version: January 24, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: Del Mar Fairgrounds*

HISTORY

Source: Author

Prior Legislation: SB 264 (Min), Ch. 684, Stats. of 2021
AB 893 (Gloria), Ch. 731, Stats. of 2019
SB 221 (Wiener), 2017, vetoed
SB 475 (Leno), 2013, vetoed
SB 585 (Leno), 2009, vetoed
AB 2948 (Leno), 2008, failed passage on the Senate Floor
SB 1733 (Speier), 2004, failed passage on the Assembly Floor
AB 295 (Corbett), Ch. 247, Stats. of 1999
AB 1107 (Ortiz), 1997, failed passage in Assembly Appropriations

Support: American Academy of Pediatrics, California; Brady California United Against Gun Violence; Brady United Against Gun Violence; City of San Diego; Friends Committee on Legislation of California; Laguna Woods Democratic Club; Los Angeles County Sheriff's Department; Neveragainca; San Diegans for Gun Violence Prevention; San Diego City Attorney's Office; The Violence Prevention Coalition of Orange County; Women Against Gun Violence

Opposition: California Rifle and Pistol Association, INC.; California Sportsman's Lobby; California Sportsman's Lobby; Gun Owners of California, INC.; National Rifle Association - Institute for Legislative Action; Outdoor Sportsmen's Coalition of California; Safari Club International - California Chapters; Safari Club International, CA Coalition

Assembly Floor Vote: 51 - 22

PURPOSE

The purpose of this bill is to prohibit the sale of firearm precursor parts on the property of the 22nd District Agricultural Association, comprising the Del Mar Fairgrounds.

Existing law provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)

Existing law prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

Existing law excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

Existing law permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

Existing law states that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

Existing law states that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)

Existing law specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)

Existing law provides that an officer, employee, operator, lessee or licensee of the 32nd District Agricultural Association shall not contract for, authorize, or allow the sale of any firearm, firearm precursor part, or ammunition on the property or in the buildings that comprise the Orange County (OC) Fair and Event Center, in the County of Orange, the City of Costa Mesa, or any successor or additional property owned, leased or otherwise occupied or operated by the district. (Pen. Code §27575(a).)

Existing law exempts the following from the prohibition in Penal Code § 27575(a):

- A gun buyback event held by a law enforcement agency.
- The sale of a firearm by a public administrator, public conservator, or public guardian within the course of their duties
- The sale of a firearm, firearm precursor part, or ammunition on state property that occurs pursuant to a contract that was entered into before January 1, 2022.
- The purchase of ammunition on state property by a law enforcement agency in the course of its regular duties. (Pen. Code §27575(b).)

Existing law specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

Existing law provides that the 22nd District Agricultural Association is the County of San Diego. (Food and Agr. Code §3873).

Existing law provides that notwithstanding any other law, an officer, employee, operator, lessee or licensee of the 22nd District Agricultural Association shall not contract for, authorize, or allow the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds in the County of San Diego, the City of Del Mar, the City of San Diego, or any successor or additional property owned, leased, or otherwise occupied or operated by the district. (Food and Agr. Code §4158(a).)

Existing law provides that the above prohibition on the sale of firearms and ammunition in the 22nd District Agricultural Association does not apply to a gun buyback event held by a law enforcement agencies. (Food and Agr. Code §4158(c).)

This bill additionally prohibits the sale of firearm precursor parts, as defined in reference to an existing Penal Code provision, on the property or in the buildings that comprise the 22nd Agricultural District.

COMMENTS

1. Need for This Bill

According to the Author:

In 2019, AB 893 [(Gloria)] Chapter 731, Statutes of 2019 prohibited the sale of firearms and ammunition at the Del Mar Fairgrounds; however, the legislation did not specify precursor parts. Since that legislation, the City and County of San Diego have adopted policies that ban the sale and use of ghost guns in the San Diego area. AB 311 will fulfill the intent of AB 893 and prohibit the sale of ghost guns at the Del Mar Fairgrounds.

2. Gun Shows Generally

Gun shows are essentially a flea market for firearms. At gun shows, individuals may buy, sale, and trade firearms and related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend.¹

According to the NRA's Institute for Legislative Action, less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.² However, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms. Though violent criminals do not buy most of their guns directly from gun shows, gun shows are "the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market."³

¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/file/57506/download>.

² NRA-ILA, <https://www.nraila.org/get-the-facts/background-checks-nics>.

³ Center for American Progress, <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>.

Concerns about gun shows extend beyond the state. A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows.⁴ In fact, 87% of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border-states.⁵

3. Gun Show Regulations in California

AB 295 (Corbett, Chapter 247, Statutes of 1999), the Gun Show Enforcement and Security Act of 2000, added a number of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1 million of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements. California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "*In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries*," *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

In addition to state laws regulating gun shows, a total ban on gun shows on county property is within the scope of a county's authority. "Under California Government Code section 23004(d), a county is given substantial authority to manage its property, including the most fundamental decision as to how the property will be used and that nothing in the gun show statutes evince intent to override that authority. The gun show statutes do not mandate that counties use their property for such shows. If the county does allow such shows, it may impose more stringent restrictions on the sale of firearms than state law prescribes." (*Nordyke v. Santa Clara County* (9th Cir. Cal. 1997) 110 F.3d 707, 766.) However, counties do not have authority to prohibit gun shows on state property such as the Cow Palace in Daly City.

4. Banning Gun Shows on State Agricultural Land

There have been several legislative attempts to regulate gun shows on State Agricultural Land—most notably, SB 475 (Leno, 2014) and SB 585 (Leno, 2010), which were both vetoed.

SB 585 would have prohibited gun shows at Cow Palace. SB 585 would have additionally required the Cow Palace District Agricultural Association (DAA) to replace gun show events with non-firearm or non-ammunition related events. In his veto message, Governor Schwarzenegger stated that SB 585 would "set a confusing precedent at the state level by statutorily prohibiting one [DAA] from selling firearms and ammunition, a legal and regulated

⁴ <https://www.gao.gov/assets/680/674570.pdf>.

⁵ <https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>.

activity, while allowing other DAAs to continue to do so. In addition, [SB 585] would result in decreased state and local tax revenues by restricting events at the Cow Palace.” This bill would apply to all DAAs equally.

Another attempt to prohibit gun sales at Cow Palace was similarly vetoed by Governor Brown. SB 475 would have permitted gun shows at Cow Palace only upon prior approval by resolution adopted by both the Board of Supervisors of the County of San Mateo and the Board of Supervisors of the City and County of San Francisco. SB 475 was vetoed because it required the Cow Palace DAA to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. In his veto message, Governor Brown stated, “I encourage all [DAAs] to work with their local communities when determining their operations and events. [SB 475], however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.” Under SB 475, the Cow Palace DAA would have been permitted to host gun shows, but only at the discretion of San Francisco and San Mateo counties. In practice, SB 475 would have allowed the Board of Cow Palace to permit some approved gun shows, and required it to prohibit other non-county-approved gun shows. In comparison, this bill instead completely prohibits all gun shows at Cow Palace.

In 2018, SB 221 (Wiener) contained very similar provisions to this bill. SB 221 would have prohibited any officer, employee, operator, or lessee of Agriculture District 1-A, from contracting for, authorizing, or allowing the sale of any firearm or ammunition at the Cow Palace property in San Mateo County and San Francisco County. Like this bill, SB 221 exempted law enforcement firearm buy-back events. Unlike this bill, SB 221 failed to exempt existing contracts to host firearms events. SB 221 was vetoed by Governor Brown with the following veto message:

This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow Palace.

This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger.

The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.

Then, in 2019, AB 893 (Gloria, Ch. 731, Stats. of 2019) added a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill effectively terminated the possibility for future gun shows at the Del Mar Fairgrounds. This bill seeks to update that prohibition to include a ban on the sale of firearm precursor parts on the Del Mar Fairgrounds.

In 2021, SB 264 (Min, Ch. 684, Stats. of 2021), which was initially introduced as a statewide ban on firearm and ammunition sales on state property, was ultimately limited to a ban on the sale of firearms, ammunition and firearm precursor parts at the OC Fair and Event Center, with limited exceptions.

5. Related Legislation –AB 1769 (Bennett) and SB 915 (Min)

AB 1769 (Bennett) establishes a ban similar to that created by SB 264, but specific to sales of firearms, ammunition and precursor parts in Ventura County. SB 915 (Min) prohibits the sale of firearms, ammunition and precursor parts on all state property, and if signed into law, would render both AB 1769 and AB 311 unnecessary.

6. Argument in Support

According to the City of San Diego:

“According to the Educational Fund to Stop Gun Violence, nearly 3,000 Californians died by gun violence in 2019, an average of eight people every day. Suicides were 54% of the gun deaths and homicides were 42%. Of the 2,945 gun deaths in California, 235 were children or teens.

While California has imposed reasonable regulations on gun show purchases, gun shows remain significant sources of firearm precursor parts. Once assembled as firearms, these parts can thwart law enforcement since no serial number attached to the gun. Very few gun owners who assemble their guns from precursor parts register with the State, resulting what are now known as “ghost guns.” As noted by Brady United Against Gun Violence, “Gun traffickers can purchase unlimited numbers of parts and kits and build unserialized guns which can then be easily diverted into the criminal market, leaving law enforcement with no way to trace their origin.”

In 2019, then Assemblymember Todd Gloria introduced AB 893 to ban the sale of firearms and ammunition at Del Mar Fairgrounds beginning in 2021. The bill was chaptered and represented the first successful bill to ban gun sales at gun shows on a taxpayer-supported property. AB 311 would expand on that law and ensure that the state property at Del Mar Fairgrounds does not contribute to the proliferation of unregulated and dangerous ‘ghost guns.’”

7. Argument in Opposition

According to Gun Owners of California, Inc.:

Our organization has a 42-year history of fighting for *effective* crime control and opposing *ineffective* gun control, and there is no evidence that gun show sales of precursor parts leads to a proliferation of criminally-used ghost guns. Unfortunately, your bill appears to be an attempt to needlessly cripple gun shows who have operated in the state practically without incident for over 50 years. Under current law, ALL sales of "precursor parts" must be processed through a licensed dealer and require a background check, whether the parts are sold in a brick-and-mortar store *or* gun show. The term “gun show loophole” is a significant misnomer given that **every** gun show must comply with **every** statute: background checks, waiting periods and registration requirements. There are zero exceptions; no one can walk into a gun show empty handed and walk out with a firearm. Plus, any “unlicensed” dealer who sells any firearm at any gun show is engaging in criminal activity and should be prosecuted. The overwhelming majority of firearms used in crimes are either stolen or secured on the black market by thieves – in fact, according to the 2019 U.S.

Department of Justice Report on the “Source and Use of Firearms involved in Crimes” only **1.3%** obtained the gun from retail source, and **0.8%** obtained it from a gun show. The evidence is very clear that gun shows themselves and the law-abiding attendees are not the problem.

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