
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 61 **Hearing Date:** April 2, 2019
Author: Portantino
Version: January 3, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Transfers*

HISTORY

Source: Author

Prior Legislation: SB 1177 (Portantino), 2018, vetoed
AB 1674 (Santiago), 2015, vetoed

Support: Bay Area Student Activists; Brady California United Against Gun Violence; Coalition Against Gun Violence; Giffords Law Center to Prevent Gun Violence; Los Angeles County Board of Supervisors; Los Angeles City Attorney

Opposition: California Rifle and Pistol Association; California Sportsman's Lobby; National Shooting Sports Foundation; Outdoor Sportsmen's Coalition of California; Safari Club International; Safari Club International Foundation

PURPOSE

The purpose of this bill is to extend the prohibition on purchasing more than one handgun a month to include all firearms.

Existing law prohibits a person from making more than one application to purchase a handgun within any 30-day period. (Pen. Code § 27535.)

Existing law prohibits a firearms dealer from delivering a handgun to a person whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a handgun that does not fall within an exception to the 30-day prohibition. A violation of that delivery prohibition by the dealer is a crime. (Pen. Code § 27540.)

This bill extends the prohibition on purchasing more than one handgun a month to all firearms, including long guns.

Existing law exempts the following from the one handgun a month prohibition: (Pen. Code, § 27535, subd. (b).)

- Any law enforcement agency.
- Any agency duly authorized to perform law enforcement duties.
- Any state or local correctional facility.
- Any private security company licensed to do business in California.
- Any person who is properly identified as a full-time paid peace officer and who is authorized to, and does carry a firearm during the course and scope of employment as a peace officer.
- Any motion picture, television, or video production company or entertainment or theatrical company whose production by its nature involves the use of a firearm.
- Any person who may make a valid claim an exemption from the waiting period set forth in Section 27540.
- Any transaction conducted through a licensed firearms dealer pursuant to Chapter 5 (commencing with Section 28050).
- Any person who is licensed as a collector and has a current certificate of eligibility issued by the Department of Justice.
- The exchange of a handgun where the dealer purchased that firearm from the person seeking the exchange within the 30-day period immediately preceding the date of exchange or replacement.
- The replacement of a handgun when the person's handgun was lost or stolen, and the person reported that firearm lost or stolen prior to the completion of the application to purchase to any local law enforcement agency of the city, county, or city and county in which the person resides.
- The return of any handgun to its owner.
- A community college that is certified by the Commission on Peace Officer Standards and Training to present the law enforcement academy basic course or other commission-certified law enforcement training.

This bill adds the following exceptions to the one gun a month prohibition:

- The purchase of a firearm, other than a handgun, by a person who possesses a valid, unexpired hunting license issued by the Department of Fish and Wildlife.
- The acquisition of a firearm, other than a handgun, at an auction or similar event conducted by a nonprofit public benefit or mutual benefit corporation to fund the activities of that corporation or local chapters of that corporation.

COMMENTS

1. Need for This Bill

According to the author:

In California, existing law prohibits applying to purchase more than one handgun within a 30-day period and prohibits a firearms dealer from delivering a handgun to a person who has submitted more than one purchase application within a 30-day period. Unfortunately, when this became law it failed to include long guns. This is a simple fix to existing law that creates a safer process for the purchasing and delivering of all types of firearms in California.

2. One Gun a Month

According to the Senate Public Safety Analysis of Assembly Bill 202 (Knox, of 1999), which created the one-handgun-a-month law in California:

The State of Virginia enacted a “one-handgun-a-month” law in 1993 (before the Federal Brady Bill, which required at least a five day waiting period plus a background check for states without such requirements). That state had weak restrictions on handgun sales and it has been stated that gun traffickers from New York City routinely traveled to Virginia to purchase quantities of weapons to take back for illegal sale in other states. Purchases of more than one handgun per 30-day period in Virginia is allowed upon completion of an "enhanced" background check when the purchase is for lawful business or personal use, for purposes of collectors, bulk sales and purchases from estates, to replace a lost or stolen weapon, and similar situations.

Supporters of limits on purchases of handguns assume that the Virginia limits and the limits in this bill would only affect a very small proportion of legitimate handgun purchasers. A family of two adults could still purchase 24 handguns a year under the provisions of both this bill and the Virginia law.

Virginia repealed this law in 2012. But, according to the Law Center to Prevent Gun Violence:

Virginia’s one-gun-a-month law – which was in effect from 1993 to 2012 and prohibited the purchase of more than one handgun per person in any 30-day period – significantly reduced the number of crime guns traced to Virginia dealers. Virginia initially adopted its law after the state became recognized as a primary source of crime guns recovered in states in the northeastern U.S. After the law’s adoption, the odds of tracing a gun originally acquired in the Southeast to a Virginia gun dealer (as opposed to a dealer in a different southeastern state) dropped by:

- 71% for guns recovered in New York;
- 72% for guns recovered in Massachusetts; and
- 66% for guns recovered in New Jersey, New York, Connecticut, Rhode Island and Massachusetts combined.

(<http://smartgunlaws.org/multiple-purchases-sales-of-firearms-policy-summary/> [footnotes omitted].)

Other states that have limits on the number of firearms that can be sold in one month include:

- California: California law prohibits any person from purchasing more than one handgun within any 30-day period. In addition, a licensed firearms dealer may not deliver a handgun to any person following notification from the California Department of Justice that the purchaser has applied to acquire a handgun within the preceding 30-day period. Finally, firearms dealers must conspicuously post in their licensed premises a warning, in block letters at least one inch in height, notifying purchasers of these restrictions.

- District of Columbia: A person may not register more than one handgun in the District during any 30-day period. Since every handgun must be registered, this amounts to a purchase and sale limitation of one handgun per 30-day period. . .
- Maryland: Maryland prohibits any person from purchasing more than one handgun or assault weapon within a 30-day period. Under limited circumstances, a person may be approved by the Secretary of the Maryland State Police to purchase multiple handguns or assault weapons in a 30-day period. Maryland also penalizes any dealer or other seller who knowingly participates in an illegal purchase of a handgun or assault weapon. . .
- New Jersey: New Jersey prohibits licensed firearms dealers from knowingly delivering more than one handgun to any person within any 30-day period. With limited exceptions, no person may purchase more than one handgun within any 30-day period. New Jersey requires a handgun purchaser to obtain a separate permit for each handgun purchased, and present the permit to the seller. The seller must keep a copy of each permit presented.

(<http://smartgunlaws.org/multiple-purchases-sales-of-firearms-policy-summary/>[footnotes omitted].)

Assembly Bill 1674 (Santiago), of 2015: Veto Message

The Governor stated in his veto message of Senate Bill 1674, which would have prohibited any person from making an application to purchase more than one firearm within any 30-day period:

This bill generally prohibits the purchase of more than one firearm within any 30-day period. It should be noted that California already bans the purchase of more than one handgun per month.

While well-intentioned, I believe this bill would have the effect of burdening lawful citizens who wish to sell certain firearms that they no longer need.

Given California's stringent laws restricting gun ownership, I do not believe this additional restriction is needed.

Senate Bill 1177 (Portantino), of 2018: Veto Message

The Governor stated in his veto message of Senate Bill 1177, which would have prohibited any person from making an application to purchase more than one firearm within any 30-day period, with the same exemptions included in this bill:

This bill prohibits any person from purchasing more than one long-gun per month.

I vetoed a substantially similar bill in 2016, and my views have not changed.

3. California Hunting Licenses

This bill creates an exemption from the prohibition on persons under the age of 21 purchasing or receiving a long gun if the person under the age of 21 has a valid, unexpired hunting license. In order to obtain a hunting license in California a person must:

- Complete the California Hunter Education Certification requirements
- Choose the correct type of hunting license.
- Purchase a license through the California Department of Fish and Wildlife website or a California approved agent.

The Official California Hunter Safety Course is an online course that costs \$28.95. There is no minimum age for the course. The course requires a follow-up course that is a 4-hour review of the online course with a certified hunter education instructor. The course includes a student demonstration of safe firearm handling and a test. Following completion of the follow-up course the enrollee receives a Hunter Education Certificate.

4. Argument in Support

According to Brady California:

In 1999, legislation (AB 202) was enacted that limits purchases of handguns from licensed firearms dealers in California to no more than one per person per 30-day period. The purpose of the bill was to curb the illegal flow of handguns by taking the profit out of selling guns from bulk purchases on the black market. SB 61 applies existing law under AB 202 to long guns, including rifles, shotguns, and lower receivers.

Under SB 61, firearms (handguns *and* long guns) will not be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period, the purchaser had made another application to purchase a firearm. Private party transactions will continue to be exempt. Additionally, rifle and shotgun (but not lower receiver) purchasers with a valid hunting license issued by the Department of Fish and Wildlife and the acquisition of a rifle or shotgun at an auction or similar event conducted by a nonprofit will be exempt.

It stands to reason that a person buying large quantities of guns at one time may be acting as a straw purchaser or gun trafficker. Moreover, firearms acquired this way are frequently used in crime. In fact, an ATF study of tracing data demonstrated that 22% of all handguns recovered in crime in 1999 were originally purchased as part of a multiple sale. A similar study found that 20% of all handguns recovered in crime in 2000 were originally purchased as part of a multiple sale. Additionally, a University of Pennsylvania report found that a quarter of all guns used in crime were purchased as part of a multiple-gun sale and that guns purchased in bulk were up to 64% more likely to be used for illegal purposes than guns purchased individually.

Since 1999, Californians have typically purchased more long guns than handguns every year. Currently, these long guns include high powered featureless weapons

with exchangeable magazines that enable rapid reload and lower receivers, which can be assembled into illegal military-style weapons. Limiting multiple-gun sales within a short period of time for such weapons, which are more lethal than handguns, is clearly in the interest of public safety.

The Department of Justice began to retain records of long gun purchases on January 1, 2014. An analysis of the transaction data from the period January 2014 through June 2015 shows that 81.9% of long guns were sold as a single long gun purchase within a 30-day period. *Clearly, the vast majority of long gun purchasers will not be impacted by SB 61.* However, at the opposite end of the spectrum, an individual purchased 177 long guns in two transactions within a one month period (April 2014). Furthermore, sales to single individuals ranging from 5 to 54 long guns per month occurred on 1,787 occasions, totaling 12,090 guns. Department data also shows that when multiple long guns are transferred in a sale, it is more than twice as likely that lower receivers are included. The largest bulk sale of long guns in one month to an individual (177 long guns) was composed *entirely* of lower receivers, which can be built into illegal assault weapons and sold on the black market.

Brady California believes that handguns and long guns should generally be subject to the same laws. Preventing the flow of illegal guns is important to public safety regardless of whether the firearm is a handgun or a long gun. Limiting firearms sales to one gun per 30-day period is a recognized strategy to reduce gun trafficking and keep firearms out of dangerous hands. Brady California thanks you for introducing SB 61.

5. Argument in Opposition

According to California Rifle and Pistol Association:

SB 61 would significantly reduce long gun sales in California. This translates into a loss of manufacturing jobs at both the state and national levels, and a significant loss of revenue for California businesses. Additionally, this bill will significantly impact the millions of dollars of Federal Pittman Robertson tax money that would be earmarked to develop and enhance habitat critical for California's wildlife. The Department of Justice (DOJ), has estimated previous versions of this same bill's implementation alone will cost hundreds of thousands of dollars, and result in significant overtime hours for Department personal to perform the necessary analysis, development, testing, and implementation to various Department databases.

SB 61 will also effectively prohibit the creation of new businesses in California involving hands on instruction in the safe handling of firearms. Should this bill become law, certified firearm instructors would no longer be able acquire the necessary firearms without having to wait months, if not years, to conduct classes for groups such as the Boy Scouts of America, Hunter Education, Youth shooting sports, and other clubs or organizations that wish to participate in firearm safety classes.

The author and proponents have argued in testimony there is no legitimate reason for anyone to need to purchase more than one firearm a month. There are, in fact, numerous legitimate recreational and Second Amendment protected reasons why an individual might want, and need, to transfer more than one firearm a month. For example, someone new to the sport of recreational competitive shooting, ‘Three Gun’ competitions, may very well need to purchase a pistol, shotgun, and rifle without having to wait 30 days between each purchase. This bill would require someone wanting to acquire all three types of firearms to undergo a process that would take at least 70 days assuming everything goes smoothly. The procedure for purchasing these firearms is already very time and travel intensive. Each transaction requiring a trip to the licensed dealer.

Currently individuals in California must go through the following steps to purchase a firearm; Obtain a firearm safety certificate; Go to a California licensed firearms dealer; Complete 4473 and (Dealer Record of Sales) DROS applications; Pass the required background check; Wait the required 10 days; Go back to dealer; Perform a safe handling demonstration; Pick up first firearm. Under SB 61 the individual would have to wait the required 30 days, then go back to dealer again; and repeat the process for each subsequent purchase. Both California and Federal law already address the author’s concerns regarding the trafficking of firearms by narrowly limiting the number of firearms an individual can sell. Rather than having the desired effect of targeting criminals, this bill will impact only the law abiding, thereby further limiting available funding to DOJ.

SB 61, does allow for numerous exemptions to the restriction which do not apply to the general public, though well intended by the author will create a nightmare DOJ and law enforcement to implement and enforce. Additionally, the author has argued this bill is necessary because the vast majority of firearms recovered from APPS seizures are long guns. However, data from the Bureau of Alcohol, Tobacco, Firearms and Explosives, ATF, clearly shows the vast majority of firearms recovered by law enforcement are handguns, which are already subject to the 30-day restriction, illustrating the restrictions ineffectiveness at reducing crime.

The author and proponents have tried three previous versions of this bill in the last three years. All vetoed by Governor Brown; 2016: AB 1674, 2017: SB 497 and in 2018: SB 1177. In his 2018 veto statement the Governor stated: “I am returning SB 1177 without my signature. This bill prohibits any person from purchasing more than one long-gun per month. I vetoed a substantially similar bill in 2016, and my views have not changed”, in his 2016 veto statement Governor Brown said in part; “ while well-intended, I believe this bill would have the effect of burdening lawful citizens who wish to sell certain firearms that they no longer need. Given California’s stringent laws restricting gun ownership, I do not believe this additional restriction is needed”.