
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 715 **Hearing Date:** April 20, 2021
Author: Portantino
Version: February 19, 2021
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Criminal law*

HISTORY

Source: Author

Prior Legislation: SB 914 (Portantino), 2020, vetoed
AB 1506 (McCarty), Ch. 326, Stats. of 2020
AB 879 (Gipson), Ch. 730, Stats. of 2019
AB 1009 (Gabriel), 2019, vetoed
AB 1669 (Bonta), Ch. 736, Stats. of 2019
SB 1100 (Portantino), Ch. 894, Stats. of 2018

Support: None known

Opposition: California Rifle and Pistol Association; Gun Owners of California

PURPOSE

The purpose of this legislation is to do the following: 1) exempt minors 16-20 year olds with valid hunting licenses from provisions banning possession or sale of firearms to minors; 2) exempt common carriers and ammunition manufacturers from prohibitions on transfers of firearms and requirements to have safety certificates; 3) provides a procedure for when a licensed firearm dealer is conducting a third-party sale and cannot return the firearm to the seller; 4) deletes obsolete provisions of law related to the processing of dealers' record of sale; and 5) clarifies what qualifies as an "unarmed" civilian to trigger investigations of officer involved shootings by the Attorney General's Office.

Existing law prohibits the sale of firearms to any person who is under the age of 21-years. (Pen. Code, § 27510, subd. (a).)

Existing law exempts persons aged 18-20 years from the prohibition on sale of firearms to persons under the age of 21-years when the person is purchasing a semiautomatic centerfire rifle if they possess a valid, unexpired hunting license issued by the Department of Fish and Wildlife. (Pen. Code, § 27510, subd. (b).)

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 Department of Justice (DOJ) to process the purchase of the firearm. (Pen. Code, §§ 26815 & 27540.)

This bill exempts the infrequent gifting of a firearm (other than a handgun or a semiautomatic centerfire rifle) by and parent or a guardian to a minor 16 years of age or older with a valid hunting license. Specifically, the prohibition on sale to minors does not apply if the following conditions are met:

- The transfer is infrequent, as defined;
- The transfer is by a parent or legal guardian of the minor;
- The minor is 16-years of age or older;
- The firearm is not a handgun or a semiautomatic centerfire rifle;
- The minor has been issued a valid hunting license that is unexpired;
- The minor is not a prohibited person as specified;
- Within 48-hours of delivering the firearm to the minor the parent or guardian of the minor submits a report to the DOJ in a manner and format prescribed by the DOJ.

This bill would further define a valid and unexpired hunting license.

This bill requires the DOJ, commencing July 1, 2023, for sales of firearms to persons under 21 years of age who are eligible to purchase a firearm based upon their possession of a hunting license, to confirm the validity of the hunting license as part of the background check.

Existing law requires that the sale, transfer, or loan of a firearm is processed through a licensed firearms dealer 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.)

This bill would exempt from these provisions any licensed common carrier involved in the delivery of firearms, as specified; and also exempt from these provisions a licensed manufacturer of ammunition, as specified. The bill specifies that they must be acting in the course and scope of their duties incident to the delivery of the firearm in accordance with the federal law.

This bill would additionally prohibit the dealer from returning the firearm to the person is prohibited from obtaining a firearm would, in those cases, provide a procedure by which that person could transfer the firearm to a third party as specified. The bill would authorize the dealer to charge a fee for any firearm stored by the dealer pursuant to this procedure.

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

This bill would also exempt from the safety certificate requirements any licensed common carrier involved in the delivery of a firearm, a manufacturer of ammunition, and transfers to minors, as specified.

Existing law permits the DOJ to charge a fee to reimburse for specified costs related to the sale or transfer of firearms, the filing of required reports, and the submission of the Dealers' Record

of Sale (DROS). Existing law now also requires that firearm purchaser information be provided to the DOJ exclusively by electronic means. (Pen. Code § 28230.)

This bill would delete obsolete provisions relating to the DOJ's authority to impose fees for non-electronic transfers of firearm purchaser information to the Department.

Existing law tasks the Attorney General (as the state prosecutor) with the investigation into incidents involving shootings of unarmed civilians that result in death. (Gov. Code, § 12525.3).

This bill would clarify that the state prosecutor may investigate when there is a death of a civilian that was unarmed or if there is a reasonable dispute as to whether the civilian was armed.

COMMENTS

1. Need for This Bill

According to the author:

Under current law when transferring or purchasing a firearm with a hunting license there is no verification during the 10 day background check to ensure the validity of the license. The bill would require the DOJ and the DFW to confirm a hunting license is valid when anyone under 21 years of age is using the license to purchase a firearm.

In 2019, a 19 year old illegally purchased a semiautomatic centerfire rifle from a dealer with an invalid hunting license and tragically opened fire at a synagogue in Poway, CA. Because the gun store failed to adequately check the validity of the hunting license and the Department of Justice cleared the background check the horrific tragedy occurred.

This bill will address the outstanding circumstances uncovered in Poway, ensuring that background checks are done comprehensively so the same mistakes do not happen again.

2. Defines a Valid Hunting License and Required DOJ Confirm the License's Validity

This bill seeks to define a valid hunting license as being valid only during the period in which the hunter may lawfully hunt the bird or mammal for which the license has been granted. Hunting licenses may be used for persons aged 16-20 years to purchase specified firearms despite the ban on the purchase of these firearms by persons under the age of 21-years.

Under existing law, persons who purchase firearms in California must wait 10-days to undergo a background check and to allow the DOJ to process the purchase of the firearm. This bill would require, starting July 1, 2023, the DOJ shall verify the validity of the minor purchaser's hunting license with the Department of Fish and Wildlife.

This provision is similar to SB 914 (Portantino) from 2020. That bill was enrolled and presented to the Governor and he issued a veto. In his message, Governor Newsom stated the following:

This bill would, beginning July 1, 2021, require the Department of Justice (DOJ) to verify the validity of a hunting license with the Department of Fish and Wildlife for a sale or transfer of a firearm to a person under 21 years of age.

DOJ does not currently have the technology to verify the validity of hunting licenses. In order to meet the requirements of this bill, it would take DOJ 30 months to complete the information technology project. During this time, they would have to redirect existing application development resources, which could affect the work currently scheduled for seven previously enacted bills impacting the firearms information technology systems.

I am concerned that adding an information technology project will impede DOJ's ability to perform the work it has already been tasked.

The Governor had concerns with the workload this provision would create with DOJ. However, the author has narrowed the universe of firearms which can be purchased by minors who possess a valid hunting license so there may be a reduction in workload.

4. Removal of Obsolete Code Sections Related to Fees

This bill includes amendments to Penal Code Section 28230, originally proposed in AB 1009 (Gabriel, 2019). The purpose of amendment 3 in Section 8 is to update and modernize the sections of the Penal Code that relate to the Dealer Record of Sale (DROS) fee. The DROS fee is a fee DOJ is able to charge each time a person attempts to purchase a firearm. The original DROS fee was found in Penal Code Section 28225, and specifically stated 11 different items the fee was intended to cover. AB 1669 (Bonta, 2019) split the original DROS fee statute up into two separate code sections. This resulted in the single outdated fee found in Penal Code Section 28225, to become two separate fees found in 28225 and the newly created Penal Code 28233. As a result of this split, the language in 28230 stating “if the department charges a fee...it shall be charged in the same amount to all categories of transaction that are within that paragraph” is outdated and obsolete. It is no longer possible for the same fee under section 28225 to be charged across all categories. This is because the fee as it reads, and was understood at the time section 28230 was last amended, no longer exists. Due to AB 1669 splitting penal code section 28225, Penal Code sections 28230, 30370, and 30470 all need to be updated to reflect the changes and reference relevant cross references.

5. Clarifies that the Attorney General/State Prosecutor May Investigate in Additional Instances of Police Shootings Resulting in Death

Last year, this Legislature passed, and the Governor signed AB 1506 (McCarty). In that bill, the Legislature gave the authority to a state prosecutor (or the Attorney General) to investigate shootings by peace officers of unarmed civilians that result in death. This bill would expand that role by also granting the AG the authority to investigate instances where there is a reasonable dispute as to whether the civilian was armed or unarmed.

6. Argument in Opposition

According to the California Rifle and Pistol Association:

On behalf of the California Rifle & Pistol Association, Incorporated (CRPA), its members and supporters throughout California, I write to express our opposition of Senate Bill 715 (SB 715). CRPA, founded in 1875, works tirelessly to defend the civil and constitutional rights of individuals who choose to responsibly own and use firearms. CRPA promotes the recreational shooting sports, and provides safety, education, and skills training to enable all persons a more enjoyable and safe recreational experience.

SB 715 started out last session as SB 914, a bill to ‘clarify’ what a valid hunting license is as it relates to the purchase of a firearm. After multiple amendments the bill was morphed to include numerous ‘fixes’ that unnecessary restrict the purchase, access and transfer of firearms and firearm parts by law abiding citizens. SB 715 is such a convoluted mess even the author, nor his staff are able to explain what this bill does! Our opposition is therefore based on three main points.

First, do we really need legislation to define what a valid hunting license is? Doesn’t the date printed on the license do that? Second, after amendments and removal of subdivision (4) allowing loans with the express permission of the minor’s parents SB 715 will effectively kill any youth shooting sports program where the minor’s parents are not present. This will eliminate the use of waivers. Firearms could only be loaned by the parents directly to the minor. Therefore if the minor is to engage in any sort of shooting program, for example, youth camps or state Hunter Education Program classes their parent or legal guardian MUST be present.

Third, SB 715 raises the cost of eligibility checks on certain ammunition purchases and precursor firearms parts. For years the Department of Justice (DOJ) has been allowed to overcharge ‘fees’ for Dealer Record of Sales (DROS) transactions. These DROS fees acuminated into large surpluses that the DOJ then unlawfully used on activities not related to DROS.

Governor Newsom vetoed Senate Bill 914, the previous version of this legislation, stating in part; *“I am returning Senate Bill 914 without my signature. This bill would, beginning July 1, 2021, require the Department of Justice (DOJ) to verify the validity of a hunting license with the Department of Fish and Wildlife for a sale or transfer of a firearm to a person under 21 years of age. DOJ does not currently have the technology to verify the validity of hunting licenses. In order to meet the requirements of this bill, it would take DOJ 30 months to complete the information technology project. During this time, they would have to redirect existing application development resources, which could affect the work currently scheduled for seven previously enacted bills impacting the firearms information technology systems. I am concerned that adding an information technology project will impede DOJ's ability to perform the work it has already been tasked.”*

We agree with Governor Newsom. We would like to see the Department of Justice focus on far more important tasks on their plate like getting over 10,000 known armed violent felons off our streets and out of our communities!

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