
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 758 **Hearing Date:** April 11, 2023
Author: Umberg
Version: February 17, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms*

HISTORY

Source: Author

Prior Legislation: SB 1375 (Umberg, 2020), not heard in Senate Public Safety
SB 61 (Portantino, Ch. 737, Stats of 2019)
AB 1609 (Alejo, Ch. 878, Stats. of 2014)
AB 740 (Alejo, 2013), died in Assembly Appropriations

Support: Unknown

Opposition: California Public Defenders Association (unless amended)

PURPOSE

The purpose of this bill is to:

- 1) Make it a crime for a person to purchase or receive a firearm from a dealer with knowledge or reasonable cause to believe that the delivery of that firearm violates specified requirements regarding firearm delivery.*
- 2) Makes it a crime for a person, corporation or dealer to bring a firearm into the state with the intent to violate specific laws regarding the illegal transfer of firearms.*
- 3) Expand several crimes related to the illegal transfer of handguns that are punishable as wobblers so that they also apply to the illegal transfer of semiautomatic centerfire rifles.*
- 4) Make minor changes to gun notices posted at inspection stations coming into the state.*

Existing law requires the Secretary of the California Department of Food and Agriculture (CDFA) to maintain plant quarantine inspection stations at such places as they deem necessary for the purpose of inspecting all conveyances which might carry plants or other things which are, or are liable to be, infested or infected with any pest. (Food and Agriculture Code §5341.)

Existing law requires the placement of conspicuous signs at or near each inspection station which disclose the existence of the station. (Food and Agriculture Code §5343.)

Existing law provides that at any inspection station maintained at or near the California border, a sign shall be conspicuously posted in block letters that includes the following notification:

- “Notice: If you are a California resident, the federal gun control act may prohibit you from bringing with you into this state firearms that you acquired outside of this state. In addition, if you are a new California resident, state law regulates your bringing into California handguns and other designated firearms and mandates that specific procedures be followed. If you have any questions about the procedures to be followed in bringing firearms into California or transferring firearms within California, you should contact the California Department of Justice or a local California law enforcement agency.” (Food and Agriculture Code §5343.5.)

This bill requires these inspection signs to also state that California law may prohibit a person from bringing a firearm into the state that was acquired outside the state, and to include the Department of Justice web address for the website containing various information on firearms.

Existing federal law provides that notwithstanding any other provision of law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm, as specified. (18 U.S.C. §926A.)

Existing law generally prohibits the sale, lease or transfer of firearms unless the person has been issued a license by the California Department of Justice, and establishes various exceptions to this prohibition. (Penal Code §§26500 – 26625.)

Existing law provides that a license to sell firearms is subject to forfeiture for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Penal Code §§26800 – 26915.)

Existing law provides that where neither party to a firearms transaction holds a dealer’s license (i.e. a “private party transaction”), the parties shall complete the transaction through a licensed firearms dealer. (Penal Code §27545.)

Existing law provides that a licensed firearms dealer shall not sell, supply, deliver or give possession or control of a firearm to any person who is under 21 years of age. (Penal Code §27510(a).)

Existing law specifies that the prohibition above does not apply to or affect the sale, supplying, delivery, or giving possession or control of a firearm that is not a handgun, semiautomatic centerfire rifle, completed frame or receiver or firearm precursor part to a person 18 years of age or older who has a valid hunting license, or is a military veteran or peace officer. (Penal Code §27510(b).)

Existing law requires that, within 60 days of bringing, any firearm, into this state, a personal firearm importer shall do one of the following:

- 1) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question;
- 2) Sell or transfer the firearm, as specified;
- 3) Sell or transfer the firearm to a licensed dealer, as specified; or
- 4) Sell or transfer the firearm to a sheriff or police department. (Pen. Code, § 27560 (a).)

Existing law defines a “personal firearm importer” as non-licensed individual who has moved into the State of California, owns a firearm that is legal within the state, and intends to possess that firearm within the state, as specified. (Penal Code § 17000.)

Existing law requires a resident of this state who is importing into this state, bringing into this state, or transporting into this state, any firearm that he or she purchased or otherwise obtained from outside of this state, to have the firearm delivered to a licensed dealer in this state for redelivery to the resident, as specified. (Pen. Code, § 27585 (a).)

Existing law establishes various requirements dealers must adhere to in conducting firearms transactions and delivering firearms, including, among others, a 10-day waiting period, purchaser background check, and possession of a handgun safety certificate by the purchaser. (Penal Code §27540.)

Existing law provides that no dealer shall acquire a firearm for the purpose of selling, loaning, or transferring the firearm, if the dealer has the intent to violate the prohibition on the sale of a firearm to someone under 21 years of age or any of the requirements to firearms transactions or the delivery of firearms in Penal Code Section 27540. (Penal Code §27520(a).)

Existing law provides that no person or corporation shall acquire a firearm for the purpose of selling, loaning, or transferring the firearm, if the person or corporation has the intent to avoid the requirement that private party transactions be completed through a licensed dealer or any exemptions to that requirement. (Penal Code §27520(b).)

This bill expands the above restrictions on dealers, persons and corporations to apply to firearms brought into the state with the intent to violate or avoid specified firearms laws.

This bill provides that the provisions of Penal Code Section 27520 are cumulative and shall not be construed as restricting the application of any other law, except that an act or omission punishable in different ways by different provisions shall not be punished under more than one provision.

This bill provides that a person shall not purchase or receive a firearm from a dealer, knowing or having reasonable cause to believe that the delivery of that firearm by that dealer to that person

violates the requirements dealers must adhere to when conducting transactions and delivering firearms.

This bill makes a violation of the above prohibition punishable as a misdemeanor or felony.

This bill provides that prohibitions in the above provision are cumulative and do not restrict the application of any other law, except that an act or omission punishable in different ways by different provisions shall not be punished under more than one provision.

Existing law provides that unless otherwise specified, crimes related to the sale, lease or transfer of firearms within specified sections of the Penal Code are misdemeanors. (Penal Code §27690(a).)

Existing law specifies several circumstances related to the illegal transfers of a firearm that would make the violation punishable as a felony. (Penal Code §27590(b).)

Existing law specifies that the following illegal firearm transfers may be punished as either a misdemeanor or a felony:

- Transfers of a handgun to a person who is not the actual purchaser or transferee, when the seller or transferor knows or has cause to know that the person is not the actual purchaser or transferee.
- Transfers of handgun with the intent to violate or avoid other specified provisions of law.
- Transfers of a handgun to a prohibited person when the transferor has cause to believe the person is prohibited.
- Transfers of a handgun to a minor, as specified.
- Transfers of a handgun to a person under 21 years of age, as specified.
- Transfers of a handgun in violation of the several processes required for the delivery of a firearm per Penal Code §27540.
- Transfers of a handgun in violation of the requirement that private party transactions be completed through a licensed firearms dealer.
- Transfers of any firearm involving an act of collusion, as specified.
- Transfers of a handgun in violation of specified restrictions on the importation of a firearm purchased outside California by a resident of California, as specified. (Penal Code § 27590(c).)

This bill provides that the violations above also apply to illegal transfers involving semiautomatic centerfire rifles.

COMMENTS

1. Need for This Bill

According to the Author:

By strengthening border controls and increasing the penalties for those caught attempting to smuggle guns into California, law enforcement can reduce the supply of illegal guns that end up in the hands of criminals.

Additionally, stricter state border laws can help to disrupt trafficking networks that transport illegal firearms across state lines. By increasing surveillance and coordination with law enforcement agencies in neighboring states, California can better track and intercept illegal guns before they reach their intended destinations.

Therefore, SB 758 will require that signage be placed at inspection sites at or near the state border which specify that state law prohibits bringing certain firearms into the state that were acquired outside of the state.

2. Transporting Firearms into California

California law imposes several restrictions on non-licensed individuals bringing a firearm into the state.¹ Firearm owners that move to California, also known as “personal firearm importers,” must either register their residency and firearm(s) with the Department of Justice, sell or transfer their firearm(s) to a licensed dealer or another eligible individual, or sell or transfer the firearm to a law enforcement agency.² California residents are prohibited from bringing a firearm into California that was purchased outside the state, unless the resident arranges for the delivery of the firearm through a licensed firearm dealer. Individuals wishing to enter California temporarily while possessing a legal firearm are not subject to any registration or notification requirements, and may transport handguns provided they are unloaded and locked in the vehicle’s trunk or in a locked container.³ As California tends to have stricter firearms laws than many other states, signs posted at inspection stations along California’s border display a notice informing individuals entering the state that firearms acquired outside the state may be prohibited and that new residents are subject to specific procedures.

Despite California’s relatively strict gun laws, gun trafficking remains a persistent problem. According to the Author:

[...] Many incidents of gun violence [in California] have resulted from firearms acquired outside of the state. According to 2021 data from the Bureau of Alcohol, Tobacco, Firearms, and Explosives [ATF], 50.4% of traced guns in California were

¹ For federally licensed gun dealers and manufacturers (FFLs) receiving shipments of weapons, California law contains a separate set of restrictions which, principally, requires mass importers to be on DOJ’s centralized list of eligible licensees. See Penal Code §§ 27555, 28465.

² Penal Code §§ 17000, 27560. The required form is a “New Resident Report of Firearm Ownership” (BOF 4010A), [BOF 4010A - NEW RESIDENT REPORT OF FIREARM OWNERSHIP \(ca.gov\)](https://www.bof.ca.gov/BOF4010A-NEWRESIDENTREPORTOFFIREARMOWNERSHIP)

³ Penal Code §25610.

sold by an out-of-state retailer, which is the eighth highest rate in the country. Firearms traced by the ATF typically have been used, or are suspected to have been used, to commit a crime. Of these guns, the most significant contributors are Arizona and Nevada, which are border states.

ATF data shows that of all guns traced in California, 14.9% came from Arizona, the largest out-of-state source. Nevada and Texas accounted for the second and third largest shares, at 7.2% and 5.2% respectively. In 2021, of the top 15 states with the highest percentage of guns from out-of-state, California had the highest total number of traced guns that originated outside the state, with 15,942, with Illinois in a distant second at 7,837.⁴

This bill makes a minor change to the verbiage of the signs posted at inspection stations coming into California. More significantly, the bill makes it a crime for a person, corporation or dealer to bring a firearm into the state with the intent to violate specific prohibitions related to the transfer of firearms. Particularly, for dealers, the bill makes it a crime to bring a firearm into the state with the intent to transfer the firearm to someone under 21 years of age (with exceptions) or to violate certain requirements related to the delivery of a firearm after it has been sold. For people and corporations, the bill makes it a crime to bring a firearm into the state with the intent to engage in a private party transaction without the involvement of a licensed firearm dealer, which is a requirement under existing law. This bill makes violation of these prohibitions punishable either a misdemeanor or a felony (known as a “wobbler”). The Author asserts that the effect of this new prohibition is that the moment the gun comes into the state with the requisite intent, the conduct can be prosecuted without the requirement of an illegal transfer or waiting for it to be a punishable attempt at an illegal transfer.

3. Wobblers Related to Firearm Transfers

Existing law prescribes the punishment for prohibited firearm transfers, most of which are only punishable as misdemeanors.⁵ However, existing law also sets forth several circumstances under which a prohibited transfer may be punishable as a wobbler, most of which specifically involve the illegal transfer of a handgun. Currently, transfers of handguns to minors and most individuals under the age of 21, transfers of handguns in violation of specified delivery requirements, private party transfers of handguns completed without a licensed dealer, and prohibited importations of handguns by California residents are all punishable as wobblers. This bill provides that the illegal transfer of semiautomatic centerfire rifles in violation of these prohibitions can also be punished as wobblers.

Additionally, the bill creates an entirely new crime, prohibiting a person from purchasing or receiving a firearm from a dealer with knowledge or reasonable cause to believe that the delivery of that firearm by that dealer violates specific requirements related to firearm delivery. These requirements include the 10-day waiting period, that the firearm must be unloaded and securely wrapped or in a locked container, the presentation of buyer’s age, identity, and a firearms safety

⁴ “California Has a Gun Trafficking Problem.” 24/7 Wall Street. 30 December 2022. [California Has a Gun Trafficking Problem – 24/7 Wall St. \(247wallst.com\)](https://www.247wallst.com/california-gun-trafficking-problem/)

⁵ Penal Code §27590(a).

certificate, and notification by the DOJ that the buyer is not a prohibited person. The bill makes a violation of this new prohibition punishable as a wobbler.

Given the bill's expansion of several firearms crimes and the creation of an entirely new crime, which may be punishable as a felony, the Committee may wish to consider and discuss whether the severity of the crimes set forth in the bill will have the intended effect on curbing the conduct the Author is seeking to limit.

4. Argument in Opposition

According to the California Public Defenders Association, which currently has an oppose unless amended position:

As public defenders we are well aware of the dangers of centerfire semiautomatic rifles. Although well intentioned, SB 758 is ill advised. It relies on the scientifically invalid premise that increasing punishment will deter the proliferation of guns and gun violence in our communities. If that policy had been effective, we would have controlled gun violence years ago when California prisons were so over-crowded that the prison system was under federal court orders to reduce the numbers of individuals incarcerated.

We have already seen what mass incarceration has done to black and brown Californians and their families. Resources were diverted to imprison people, while California schools, health care and housing went wanting for adequate funding. Adopting a public health approach to the pandemic of guns in our state would be more cost effective and humane. California has reduced smoking by a combination of taxes on cigarettes, bans on smoking in public spaces and education. Such a multi-pronged strategy should be employed to reduce the number of centerfire semiautomatic rifles in California.

Also, the Legislature should consider allowing individuals to bring public nuisance lawsuits against individuals and companies who manufacture centerfire semiautomatic rifles. Serious financial penalties are more likely to deter these individuals and their companies than criminal penalties against the unwitting individual who possesses such a weapon. SB 758 is not needed. There are already sufficient penalties for any individual who commits a crime while armed with any kind of firearm or using a firearm. These penalties range from an addition year in county jail or state prison to 25 years to life in state prison depending on the seriousness of the offense.

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