
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 918 **Hearing Date:** March 22, 2022
Author: Portantino
Version: February 3, 2022
Urgency: No **Fiscal:** No
Consultant: AB

Subject: *Firearms*

HISTORY

Source: Department of Justice

Prior Legislation: SB 715 (Portantino), Ch. 250, Stats. of 2021
SB 941 (Portantino, 2020), vetoed by Governor
SB 914 (Portantino, 2020), held due to COVID-19
SB 118 (Committee on Budget), Ch. 29, Stats. of 2020
AB 879 (Gipson), Ch. 730, Stats. of 2019
AB 1669 (Bonta), Ch. 736, Stats. of 2019
SB 1235 (De Leon), Ch. 55, Stats. of 2016

Support: Unknown

Opposition: None Received

PURPOSE

The purpose of this bill is to correct cross references in the statutes establishing the basic ammunition eligibility check fee and the precursor part eligibility check fee.

Existing law authorizes the Department of Justice (DOJ) to require firearms dealers to charge each firearm purchaser a fee not to exceed \$1, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index. (Pen. Code, § 28225(a).)

Existing law provides that the fee in Penal Code §28225(a) shall be no more than is necessary to fund specified governmental notification and reporting functions. (Pen. Code, § 28225(b).)

Existing law authorizes the DOJ to charge a fee sufficient to reimburse it for specified administrative costs, but not to exceed \$14, except that the fee may be increase at a rate not to exceed any increase in the California Consumer Price Index. (Pen. Code, § 28230.)

Existing law authorizes the DOJ to require a firearms dealer to charge each firearm purchaser a fee in the amount of thirty-one dollars and nineteen cents (\$31.19), which may be increased at a rate no more than any increase in the California Consumer Price Index. (Pen. Code, § 28233(a), (c).)

Existing law requires that fees collected pursuant to Pen. Code §28233(a) be deposited in the Dealer's Record of Sale (DROS) Supplemental Subaccount within the DROS Special Account of the General Fund, and authorizes the expenditure of those funds by the DOJ to offset the reasonable costs of specified firearms-related regulatory and enforcement activities. (Pen. Code, § 28233(b).)

Existing law requires all purchaser information to be transmitted to the DOJ solely via electronic transfer. ((Pen. Code, § 28205.)

Existing law provides that, commencing July 1, 2019, the DOJ shall electronically approve the purchase or transfer of ammunition through a vendor, and establishes related guidelines and eligibility criteria. (Pen. Code, § 30370(a), (b).)

Existing law requires the DOJ to develop a procedure by which a person who is not prohibited from purchasing or possessing ammunition may be approved for a single ammunition transaction or purchase. (Pen. Code, § 30370(c).)

Existing law requires the DOJ to recover its costs under Penal Code §30370 by charging the ammunition transaction or purchase applicant a fee not to exceed the fee charged for its DROS process, as described in Penal Code Section 28225, and not to exceed the DOJ's reasonable costs. (Pen. Code, § 30370(c).)

This bill requires the DOJ to recover its costs under Penal Code §30370 by charging a fee not to exceed the fee charged for the DROS process described in Penal Code §28225, as it read on December 31, 2019.

Existing law provides that, commencing July 1, 2022, the DOJ shall electronically approve the purchase or transfer of firearm precursor parts through a vendor, and establishes related guidelines and eligibility criteria. (Pen. Code, § 30470(a), (b).)

Existing law requires the DOJ to develop a procedure by which a person who is not prohibited from purchasing or possessing a firearm precursor part may be approved for a single ammunition transaction or purchase. (Pen. Code, § 30470(c).)

Existing law requires the DOJ to recover its costs under Penal Code §30370 by charging the ammunition transaction or purchase applicant a fee not to exceed the fee charged for its DROS process, as described in Penal Code Section 28225, and not to exceed the DOJ's reasonable costs. (Pen. Code, § 30470(c).)

This bill requires the DOJ to recover its costs under Penal Code §30470 by charging a fee not to exceed the fee charged for the DROS process described in Penal Code §28225, as it read on December 31, 2019.

Existing law provides that, commencing July 1, 2022, licensed firearms dealers and licensed ammunition vendors shall automatically be deemed firearm precursor part vendors, provided they comply with specified requirements. (Pen. Code, § 30485(d).)

This bill updates a cross-reference in the provision above to refer to the correct set of dealer requirements.

COMMENTS

1. Need for This Bill

According to the author:

“There are currently a number of cross-referencing issues arising from the passage of SB 1235 (2016), AB 1669 (2019) and AB 879 (2019). Penal Code § 30370, as amended by SB 1235 (2016), cross references an out-of-date code section. Penal Code § 30470, as amended by AB 879 (2019) and SB 118 (2020), cross references an out-of-date code section. Penal Code § 30370, as amended by AB 879 (2019) and SB 118 (2020), cross references an out-of-date code section.

The Dealer Record of Sale (DROS) fee is collected each time a firearm is transferred or sold by a licensed dealer in California. The fee was meant to address the cost of the background check performed on a purchaser as well as other program costs. [...] AB 1669 (2019) [...] updated and augmented the DROS fee – in two separate statutes. Under the resulting law, the original DROS fee was reduced to \$1 and may be used for reimbursing certain costs. The new Supplemental Fund, which imposed a \$31.19 fee, was to be used by DOJ for core programmatic firearms regulatory functions and background checks. This update has not been uniformly reflected in legislation relating to the collection of fees.

SB 918 cleans up outdated provisions and the erroneously omitted cross reference updates relating to the DROS fee, the supplemental fee, and the authority of DOJ in the regulation of the sale of firearm precursor parts and authorization to issue a firearm precursor part vendor license. This bill only updates cross references in the aforementioned provisions.”

2. Relevant Department of Justice Firearm Fees

a. Dealer’s Record of Sale Fee

The DROS fee was first established in 1982 in order to cover DOJ’s cost of performing a background check on firearms purchasers. The initial DROS Fee was \$2.25. Over the years, the amount of the DROS Fee increased, and so did the number of activities that it funded. In 1995, the Legislature amended the statute to fix the DROS Fee at \$14 and allowed it to be adjusted to account for inflation. In 2004, the Department adopted regulations adjusting the fee to \$19. The DROS fee is one of several fees that is attached to the purchase of a new firearm. In addition, there is a \$1 firearm safety fee, and a \$5 firearms safety and enforcement fee.¹

Although the initial DROS fee was only intended to cover the cost of background checks, subsequent legislation contemplated that DROS funds be used for other purposes, such as enforcement of the Armed Prohibited Persons System (APPS.) Specifically, SB 819 (Leno, Ch. 743, Stats. of 2011), allowed DOJ to utilize the DROS Account for the additional, limited purpose of funding enforcement of the APPS.

¹ <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/pdf/firearms-fees.pdf>.

As will be described in greater detail below, the DROS fee was increased to \$31.19 beginning in 2020.

b. Basic Ammunition Eligibility Check Fee

SB 1235 (De Leon, Ch. 55, Stats. of 2016) repealed and reconstructed many provisions of the Penal Code related to ammunition vendors, and established a new regulatory framework for the sale and purchase of ammunition in California. Among these changes was a requirement that DOJ impose a fee to recover its processing and enforcement costs related to ammunition purchase authorizations.² Under the language of SB 1235, this per-transaction fee was to be set in accordance with the DROS fee, which at the time was set forth in Penal Code 28225.

c. Precursor Part Eligibility Check Fee

AB 879 (Gipson, Ch. 730, Stats. of 2019) established a new framework to regulate the manufacture, possession and sale of firearm precursor parts. Much of this framework was adapted from the language of SB 1235, including the cost recovery fee described in (b) above. Under AB 879, the DOJ's cost recovery fee for precursor part purchase authorizations was also tied to the DROS fee, which at the time was still set forth in Penal Code 28225.

3. Recent Changes to DROS Fee

Prior to 2020, the DROS fee was implemented in two separate statutes, one that allowed DOJ to charge the fee to the dealer for each firearms purchased and another that effectively allowed the firearms dealer to pass that cost along to the purchaser. AB 1669 (Bonta, Ch. 736, Stats. of 2019) increased the DROS fee to \$31.19 and restructured it within the Penal Code. According to the DOJ website:

“AB 1669 adds a new section to the Penal Code, section 28233. Subdivision (b) of that section authorizes a new \$31.19 fee for regulatory and enforcement activities related to the sale, purchase, manufacturing, lawful or unlawful possession, loan, or transfer of firearms pursuant to any provision listed in section 16580. Because the new fee in section 28233 funds the activities previously specified by section 28225, and because this fee is the principal fee charged at the time of each DROS transaction, the Department is naming the fee authorized by section 28233 the ‘DROS Fee.’³

According to the DOJ, the new DROS fee under AB 1669 was calculated to create sufficient revenues to avert the need for additional General Fund or significant programmatic service reductions. Additionally, AB 1669 authorized the DOJ to adjust the DROS fee in order to fund any firearms activity that is required of DOJ for which there is no sustainable source of funding.

² Penal Code §30370.

³ “Regulations: Dealer Record of Sale (DROS) Fee (Emergency).” California Department of Justice website. <https://oag.ca.gov/firearms/regs/drosfee>

In 2013, a group of plaintiffs composed of gun owners and enthusiasts challenged the DROS fee in Sacramento Superior Court. (*Gentry v. Becerra*, (Mar. 4, 2019, No. 34-2013-80001667) Sacramento Sup. Ct.) The plaintiffs argued that DROS fee was not properly calculated, that DOJ was using DROS funds outside of their statutory authority, and that the fee was in fact a tax, thus violating the California Constitution. (*Id.* at 1.) Ultimately, the superior court ruled against the plaintiffs, finding that the DROS fee was a reasonable approximation of the costs of the government-provided regulatory services and that the DROS fee was not a tax. (*Id.* at 13.)⁴ In 2021, the California Court of Appeal, in an unpublished opinion, affirmed the decision of the lower court. (*Gentry v. Rodriguez*, 2021 Cal. App. Unpub. LEXIS 2004, 2021 WL 1152731)

4. Effect of This Bill

As mentioned previously, the amounts of the cost recovery fees authorized by SB 1235 and AB 879 related to ammunition and precursor part purchases are tied directly to the amount of the DROS fee. However, when the DROS fee was adjusted and codified in a new section of the Penal Code, the code sections establishing those cost recovery fees were not updated with the correct cross-reference. Although the DOJ's fee authority and assessments have not changed, and there was never an intent to lower the fees, that erroneous omission remains in existing law. This bill amends the cost recovery fee provisions related to ammunition and precursor part purchases to refer to the DROS fee as it was codified prior to the effective date of AB 1669. In doing so, the bill clarifies that these cost recovery fees remain unchanged since the effective date of AB 1669.

-- END --

⁴ The superior court decision can be found here: <https://michellawyers.com/wp-content/uploads/2019/09/2019-03-04-Ruling-on-Hearing-on-Petition-for-Writ-of-Mandate-Complaint.pdf>