

AMENDED IN ASSEMBLY APRIL 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 539

Introduced by Assembly Member Pan

February 20, 2013

An act to amend Sections *11106*, 29810, 29825, 29850, and 33870 of, and to add Section 29830 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 539, as amended, Pan. Firearm possession: prohibitions: transfer to licensed dealer.

Existing law prohibits specified persons, including persons convicted of specified crimes, persons addicted to the use of any narcotic drug, certain probationers, and persons against whom specified restraining orders or injunctions apply, from possessing a firearm. Under existing law a violation of these provisions is justified if the person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law, if certain requirements are met. Existing law allows a firearm that is in the custody of a law enforcement agency to be sold or transferred to a licensed dealer if the law enforcement agency determines that the legal owner of the firearm is prohibited from possessing the firearm. Existing law requires that a person prohibited from possessing a firearm pursuant to certain provisions of law to be notified and provided with a form to facilitate the transfer of firearms. Existing law requires the ~~Judicial-Counsel~~ *Council* to provide notice on all protective orders that the respondent is prohibited from possessing a firearm while the protective order is in effect and that the firearm shall

be relinquished to a local law enforcement agency or a licensed firearms dealer.

This bill would allow anyone who is prohibited from owning or possessing a firearm pursuant to the above provisions or any other provision of law to transfer any firearm or firearms in his or her possession, or of which he or she is the owner, to a licensed firearms dealer for the duration of the prohibition if the prohibition on owning or possessing the firearm will ~~expires~~ *expire* on a date specified in the court order. *The bill would require a firearms dealer who stores a firearm under these circumstances to notify the Department of Justice of the date that the dealer has taken possession of the firearm and the date that the owner has taken back possession of the firearm, and would also require the Attorney General to maintain a record of this information.* The bill would make conforming changes to the above provisions. Because the bill would impose certain requirements on local agencies relating to the transfer of firearms to a licensed firearms dealer, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11106 of the Penal Code, as added by
2 Chapter 745 of the Statutes of 2011, is amended to read:
3 11106. (a) In order to assist in the investigation of crime, the
4 prosecution of civil actions by city attorneys pursuant to paragraph
5 (3) of subdivision (c), the arrest and prosecution of criminals, and
6 the recovery of lost, stolen, or found property, the Attorney General
7 shall keep and properly file a complete record of all copies of
8 fingerprints, copies of licenses to carry firearms issued pursuant
9 to Section 26150, 26155, 26170, or 26215, information reported
10 to the Department of Justice pursuant to Section 26225 or 29830,
11 dealers' records of sales of firearms, reports provided pursuant to

1 Article 1 (commencing with Section 27500) of Chapter 4 of
2 Division 6 of Title 4 of Part 6, or pursuant to any provision listed
3 in subdivision (a) of Section 16585, forms provided pursuant to
4 Section 12084, as that section read prior to being repealed, reports
5 provided pursuant to Article 1 (commencing with Section 26700)
6 and Article 2 (commencing with Section 26800) of Chapter 2 of
7 Division 6 of Title 4 of Part 6, that are not dealers' records of sales
8 of firearms, and reports of stolen, lost, found, pledged, or pawned
9 property in any city or county of this state, and shall, upon proper
10 application therefor, furnish this information to the officers referred
11 to in Section 11105.

12 (b) (1) The Attorney General shall permanently keep and
13 properly file and maintain all information reported to the
14 Department of Justice pursuant to the following provisions as to
15 firearms and maintain a registry thereof:

16 (A) Article 1 (commencing with Section 26700) and Article 2
17 (commencing with Section 26800) of Chapter 2 of Division 6 of
18 Title 4 of Part 6.

19 (B) Article 1 (commencing with Section 27500) of Chapter 4
20 of Division 6 of Title 4 of Part 6.

21 (C) Chapter 5 (commencing with Section 28050) of Division 6
22 of Title 4 of Part 6.

23 (D) Any provision listed in subdivision (a) of Section 16585.

24 (E) Former Section 12084.

25 (F) Any other law.

26 (2) The registry shall consist of all of the following:

27 (A) The name, address, identification of, place of birth (state
28 or country), complete telephone number, occupation, sex,
29 description, and all legal names and aliases ever used by the owner
30 or person being loaned the particular firearm as listed on the
31 information provided to the department on the Dealers' Record of
32 Sale, the Law Enforcement Firearms Transfer (LEFT), as defined
33 in former Section 12084, or reports made to the department
34 pursuant to any provision listed in subdivision (a) of Section 16585
35 or any other law.

36 (B) The name and address of, and other information about, any
37 person (whether a dealer or a private party) from whom the owner
38 acquired or the person being loaned the particular firearm and
39 when the firearm was acquired or loaned as listed on the
40 information provided to the department on the Dealers' Record of

1 Sale, the LEFT, or reports made to the department pursuant to any
2 provision listed in subdivision (a) of Section 16585 or any other
3 law.

4 (C) Any waiting period exemption applicable to the transaction
5 which resulted in the owner of or the person being loaned the
6 particular firearm acquiring or being loaned that firearm.

7 (D) The manufacturer's name if stamped on the firearm, model
8 name or number if stamped on the firearm, and, if applicable, the
9 serial number, other number (if more than one serial number is
10 stamped on the firearm), caliber, type of firearm, if the firearm is
11 new or used, barrel length, and color of the firearm, or, if the
12 firearm is not a handgun and does not have a serial number or any
13 identification number or mark assigned to it, that shall be noted.

14 (3) Information in the registry referred to in this subdivision
15 shall, upon proper application therefor, be furnished to the officers
16 referred to in Section 11105, to a city attorney prosecuting a civil
17 action, solely for use in prosecuting that civil action and not for
18 any other purpose, or to the person listed in the registry as the
19 owner or person who is listed as being loaned the particular firearm.

20 (4) If any person is listed in the registry as the owner of a firearm
21 through a Dealers' Record of Sale prior to 1979, and the person
22 listed in the registry requests by letter that the Attorney General
23 store and keep the record electronically, as well as in the record's
24 existing photographic, photostatic, or nonerasable optically stored
25 form, the Attorney General shall do so within three working days
26 of receipt of the request. The Attorney General shall, in writing,
27 and as soon as practicable, notify the person requesting electronic
28 storage of the record that the request has been honored as required
29 by this paragraph.

30 (c) (1) Any officer referred to in paragraphs (1) to (6), inclusive,
31 of subdivision (b) of Section 11105 may disseminate the name of
32 the subject of the record, the number of the firearms listed in the
33 record, and the description of any firearm, including the make,
34 model, and caliber, from the record relating to any firearm's sale,
35 transfer, registration, or license record, or any information reported
36 to the Department of Justice pursuant to Section 26225, Article 1
37 (commencing with Section 26700) and Article 2 (commencing
38 with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part
39 6, Article 1 (commencing with Section 27500) of Chapter 4 of
40 Division 6 of Title 4 of Part 6, Chapter 5 (commencing with

1 Section 28050) of Division 6 of Title 4 of Part 6, Article 2
2 (commencing with Section 28150) of Chapter 6 of Division 6 of
3 Title 4 of Part 6, Article 5 (commencing with Section 30900) of
4 Chapter 2 of Division 10 of Title 4 of Part 6, Chapter 2
5 (commencing with Section 33850) of Division 11 of Title 4 of Part
6 6, or any provision listed in subdivision (a) of Section 16585, if
7 the following conditions are met:

8 (A) The subject of the record has been arraigned for a crime in
9 which the victim is a person described in subdivisions (a) to (f),
10 inclusive, of Section 6211 of the Family Code and is being
11 prosecuted or is serving a sentence for the crime, or the subject of
12 the record is the subject of an emergency protective order, a
13 temporary restraining order, or an order after hearing, which is in
14 effect and has been issued by a family court under the Domestic
15 Violence Protection Act set forth in Division 10 (commencing
16 with Section 6200) of the Family Code.

17 (B) The information is disseminated only to the victim of the
18 crime or to the person who has obtained the emergency protective
19 order, the temporary restraining order, or the order after hearing
20 issued by the family court.

21 (C) Whenever a law enforcement officer disseminates the
22 information authorized by this subdivision, that officer or another
23 officer assigned to the case shall immediately provide the victim
24 of the crime with a “Victims of Domestic Violence” card, as
25 specified in subparagraph (H) of paragraph (9) of subdivision (c)
26 of Section 13701.

27 (2) The victim or person to whom information is disseminated
28 pursuant to this subdivision may disclose it as he or she deems
29 necessary to protect himself or herself or another person from
30 bodily harm by the person who is the subject of the record.

31 ~~(d) This section shall become operative January 1, 2014.~~

32 **SECTION 1.**

33 *SEC. 2.* Section 29810 of the Penal Code is amended to read:

34 29810. (a) For any person who is subject to Section 29800 or
35 29805, the court shall, at the time judgment is imposed, provide
36 on a form supplied by the Department of Justice, a notice to the
37 defendant prohibited by this chapter from owning, purchasing,
38 receiving, possessing, or having under custody or control, any
39 firearm. The notice shall inform the defendant of the prohibition
40 regarding firearms and include a form to facilitate the transfer of

1 firearms. If the prohibition on owning or possessing a firearm will
 2 expire on a date specified in the court order, the form shall inform
 3 the defendant that he or she may elect to have his or her firearm
 4 transferred to a firearms dealer licensed pursuant to Section 29830.

5 (b) Failure to provide the notice described in subdivision (a) is
 6 not a defense to a violation of this chapter.

7 ~~SEC. 2.~~

8 *SEC. 3.* Section 29825 of the Penal Code is amended to read:

9 29825. (a) Every person who purchases or receives, or attempts
 10 to purchase or receive, a firearm knowing that the person is
 11 prohibited from doing so by a temporary restraining order or
 12 injunction issued pursuant to Section 527.6, 527.8, or 527.85 of
 13 the Code of Civil Procedure, a protective order as defined in
 14 Section 6218 of the Family Code, a protective order issued pursuant
 15 to Section 136.2 or 646.91 of this code, or a protective order issued
 16 pursuant to Section 15657.03 of the Welfare and Institutions Code,
 17 is guilty of a public offense, which shall be punishable by
 18 imprisonment in a county jail not exceeding one year or in the
 19 state prison, by a fine not exceeding one thousand dollars (\$1,000),
 20 or by both that imprisonment and fine.

21 (b) Every person who owns or possesses a firearm knowing that
 22 the person is prohibited from doing so by a temporary restraining
 23 order or injunction issued pursuant to Section 527.6, 527.8, or
 24 527.85 of the Code of Civil Procedure, a protective order as defined
 25 in Section 6218 of the Family Code, a protective order issued
 26 pursuant to Section 136.2 or 646.91 of this code, or a protective
 27 order issued pursuant to Section 15657.03 of the Welfare and
 28 Institutions Code, is guilty of a public offense, which shall be
 29 punishable by imprisonment in a county jail not exceeding one
 30 year, by a fine not exceeding one thousand dollars (\$1,000), or by
 31 both that imprisonment and fine.

32 (c) If probation is granted upon conviction of a violation of this
 33 section, the court shall impose probation consistent with Section
 34 1203.097.

35 (d) The Judicial Council shall provide notice on all protective
 36 orders that the respondent is prohibited from owning, possessing,
 37 purchasing, receiving, or attempting to purchase or receive a
 38 firearm while the protective order is in effect. The order shall also
 39 state that a firearm owned or possessed by the person shall be
 40 relinquished to the local law enforcement agency for that

1 jurisdiction, sold to a licensed firearms dealer, or transferred to a
2 licensed firearms dealer pursuant to Section 29830 for the duration
3 of the period that the protective order is in effect, and that proof
4 of surrender or sale shall be filed within a specified time of receipt
5 of the order. The order shall state the penalties for a violation of
6 the prohibition. The order shall also state on its face the expiration
7 date for relinquishment.

8 ~~SEC. 3.~~

9 *SEC. 4.* Section 29830 is added to the Penal Code, to read:

10 29830. (a) Any person who is prohibited from owning or
11 possessing a firearm pursuant to this article, or who is prohibited
12 from owning or possessing a firearm pursuant to any other law,
13 may transfer or cause to be transferred, any firearm or firearms in
14 his or her possession, or of which he or she is the owner, to a
15 firearms dealer licensed pursuant to Section 26700 to 26915,
16 inclusive, for storage during the duration of the prohibition, if the
17 prohibition on owning or possessing the firearm will expire on a
18 date specified in the court order.

19 (b) A firearms dealer who stores a firearm or firearms pursuant
20 to subdivision (a), may charge the owner a fee for the storage of
21 the firearm or firearms.

22 (c) *A firearms dealer who stores a firearm or firearms pursuant*
23 *to subdivision (a) shall notify the Department of Justice of the date*
24 *that the firearms dealer has taken possession of the firearm or*
25 *firearms and the date that the owner has taken back possession of*
26 *the firearm or firearms.*

27 ~~SEC. 4.~~

28 *SEC. 5.* Section 29850 of the Penal Code is amended to read:

29 29850. (a) A violation of Section 29800, 29805, 29815, or
30 29820 is justifiable where all of the following conditions are met:

31 (1) The person found the firearm or took the firearm from a
32 person who was committing a crime against the person who found
33 or took the firearm.

34 (2) The person possessed the firearm no longer than was
35 necessary to deliver or transport the firearm to a law enforcement
36 agency for that agency's disposition according to law or to a
37 licensed firearms dealer for transfer or for storage pursuant to
38 Section 29830.

1 (3) If the firearm was transported to a law enforcement agency
2 or to a licensed firearms dealer, it was transported in accordance
3 with subdivision (b) of Section 25570.

4 (4) If the firearm is being transported to a law enforcement
5 agency or to a licensed firearms dealer, the person transporting
6 the firearm has given prior notice to the law enforcement agency
7 or to the licensed firearms dealer that the person is transporting
8 the firearm to the law enforcement agency or the licensed firearms
9 dealer for disposition according to law.

10 (b) Upon the trial for violating Section 29800, 29805, 29815,
11 or 29820, the trier of fact shall determine whether the defendant
12 was acting within the provisions of the exemption created by this
13 section.

14 (c) The defendant has the burden of proving by a preponderance
15 of the evidence that the defendant comes within the provisions of
16 the exemption created by this section.

17 ~~SEC. 5.~~

18 *SEC. 6.* Section 33870 of the Penal Code is amended to read:

19 33870. (a) If a law enforcement agency determines that the
20 applicant is the legal owner of any firearm deposited with the
21 agency, that the applicant is prohibited from possessing any
22 firearm, and that the firearm is an otherwise legal firearm, the
23 applicant shall be entitled to sell or transfer the firearm to a licensed
24 firearms dealer. If a law enforcement agency determines that the
25 applicant is prohibited from owning or possessing any firearm and
26 the prohibition on owning or possessing the firearm will expire on
27 a date specified in the court order, the applicant shall be entitled
28 to have the firearm stored by a licensed ~~firearm~~ *firearms* dealer
29 for the duration of the prohibition period pursuant to Section 29830.

30 (b) If the firearm has been lost or stolen, the firearm shall be
31 restored to the lawful owner pursuant to Section 11108.5 upon the
32 owner’s identification of the firearm, proof of ownership, and proof
33 of eligibility to possess a firearm pursuant to Section 33865.

34 (c) This section does not prevent the local law enforcement
35 agency from charging the rightful owner of the firearm the fees
36 described in Section 33880.

37 ~~SEC. 6.~~

38 *SEC. 7.* If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O