

AMENDED IN SENATE JUNE 17, 2013

AMENDED IN ASSEMBLY MAY 15, 2013

AMENDED IN ASSEMBLY APRIL 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 280

Introduced by Assembly Member Alejo

February 11, 2013

An act to amend Section ~~44036~~ 27590 of, and to add Section 27561 to, the ~~Education Code Penal Code~~, relating to ~~school employees~~ firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 280, as amended, Alejo. ~~School employees: paid voluntary leave of absence.~~ *Firearms.*

(1) Existing law requires the parties to a firearms transaction to complete the sale, loan, or transfer through a licensed firearms dealer if neither party to a firearms transaction holds a firearms dealer's license.

This bill would prohibit a person, corporation, or dealer from transporting or bringing a firearm into the state for the purpose of selling, transferring, or loaning the firearm with the intent to avoid the above requirement. The bill would make a violation of this prohibition punishable by imprisonment in a county jail not exceeding one year, or in a county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. The bill would also make a violation of this prohibition subject to the 10-year prohibition on owning, purchasing, receiving, possessing, or having a firearm. The bill would also make a person who violates this prohibition

ineligible for probation, except in an unusual case where the interests of justice would best be served if the person is granted probation. By creating a new crime, this bill would impose a state-mandated local program.

(2) Existing law prohibits a licensed firearms dealer from selling, supplying, delivering, or giving possession or control of a handgun to any person under 21 years of age, or any other firearm to a person under 18 years of age. Existing law prohibits a licensed firearms dealer from delivering a firearm to a person within 10 days of the application to purchase or if the Department of Justice has notified the dealer that the person is prohibited from possessing a firearm. Existing law prohibits a dealer from delivering a handgun if the dealer is notified by the Department of Justice that the purchaser has made another application to purchase a handgun within the preceding 30-day period. Existing law also requires the firearm to be unloaded and securely wrapped or in a locked container, and requires that the purchaser present clear evidence of identity and age and a handgun safety certificate before delivery.

This bill would prohibit a firearms dealer from transporting or bringing into the state a firearm for the purpose of selling, transferring, or loaning the firearm with the intent to violate the above provisions. The bill would make a violation of this prohibition punishable by imprisonment in a county jail not exceeding one year, or in a county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. The bill would also make a violation of this prohibition subject to the 10-year prohibition on owning, purchasing, receiving, possessing, or having a firearm. The bill would also make a person who violates this prohibition ineligible for probation, except in an unusual case where the interests of justice would best be served if the person is granted probation. By creating a new crime, this bill would impose a state-mandated local program.

(3) Existing law prohibits a licensed firearms dealer from delivering a firearm to a person within 10 days of the application to purchase or if the Department of Justice has notified the dealer that the person is prohibited from possessing a firearm. Existing law also requires that the purchaser present clear evidence of identity and age and a handgun safety certificate before delivery.

This bill would prohibit a person from purchasing or receiving a firearm from a dealer if the person knows or has reasonable cause to believe that the delivery of the firearm by that dealer to that person

violates the above provisions. The bill would make a violation of this prohibition a misdemeanor. If the violation involves a handgun, the bill would make a violation of this provision punishable by imprisonment in a county jail not exceeding one year, or in a county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. If the violation involves a handgun, the bill would also make a violation of this provision subject to the 10-year prohibition on owning, purchasing, receiving, possessing, or having a firearm. If the violation involves a handgun, the bill would also make a person who violates this provision ineligible for probation, except in an unusual case where the interests of justice would best be served if the person is granted probation. By creating a new crime, this bill would impose a state-mandated local program.

(4) Existing law prohibits a licensed firearms dealer from delivering a firearm to a person within 10 days of the application to purchase or if the Department of Justice has notified the dealer that the person is prohibited from possessing a firearm. Existing law prohibits a dealer from delivery a handgun if the dealer is notified by the Department of Justice that the purchaser has made another application to purchase a handgun within the preceding 30-day period. Existing law also requires the firearm to be unloaded and securely wrapped or in a locked container, and that the purchaser present clear evidence of identity and age and a handgun safety certificate before delivery.

This bill would require a California resident who seeks to own and possess within the state a firearm acquired from outside of the state to have the firearm delivered to a dealer in the state for delivery pursuant to the above requirements. The bill would make a violation of this provision a misdemeanor. If the violation involves a handgun, the bill would make a violation of this provision punishable by imprisonment in a county jail not exceeding one year, or in a county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. If the violation involves a handgun, the bill would also make a violation of this prohibition subject to the 10-year prohibition on owning, purchasing, receiving, possessing, or having a firearm. If the violation involves a handgun, the bill would also make a person who violates this prohibition ineligible for probation, except in an unusual case where the interests of justice would best be served if the person is granted probation. By creating a new crime, this 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 no reimbursement is required by this act for a specified reason.

~~Existing law authorizes the governing board of a school district to grant a leave of absence with pay to a school employee under specified circumstances, including, among others, if the employee is called for jury duty.~~

~~This bill would prohibit the governing board of a school district from granting a paid voluntary leave of absence to a district superintendent, deputy superintendent, assistant superintendent, or associate superintendent, of schools other than for those specified purposes, unless the paid voluntary leave of absence is approved by the governing board of the school district at a public meeting.~~

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

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

1 SECTION 1. Section 27561 is added to the Penal Code, to
 2 read:

3 27561. (a) A person, corporation, or dealer shall not transport
 4 or bring into this state a firearm for the purpose of selling,
 5 transferring, or loaning the firearm with the intent to avoid the
 6 requirements of Section 27545, or with the intent to avoid the
 7 requirements of any exemption to Section 27545.

8 (b) A dealer shall not transport or bring into this state a firearm
 9 for the purpose of selling, transferring, or loaning the firearm with
 10 the intent to violate Section 27510 or 27540.

11 (c) A person shall not purchase or receive a firearm from a
 12 dealer, knowing or having reasonable cause to believe, that the
 13 delivery of that firearm by that dealer to that person violates
 14 subdivision (a), (c), (d), or (e) of Section 27540.

15 (d) A California resident who seeks to own and possess within
 16 the state a firearm acquired from outside the state shall have that
 17 firearm delivered to a dealer in this state for delivery to that
 18 resident subject to the prohibitions specified in Section 27540.

1 (e) Subdivision (d) does not apply to or affect any of the
2 following:

3 (1) A licensed collector who is subject to and complies with
4 Section 27565.

5 (2) A dealer, if the dealer is receiving the firearm in the course
6 and scope of his or her activities as a dealer.

7 (3) A wholesaler, if the wholesaler is receiving the firearm in
8 the course and scope of his or her activities as a wholesaler.

9 (4) A person licensed as an importer of firearms or ammunition
10 or licensed as a manufacturer of firearms or ammunition pursuant
11 to Chapter 44 (commencing with Section 921) of Title 18 of the
12 United States Code and the regulations issued pursuant thereto if
13 the importer or manufacturer is receiving the firearm in the course
14 and scope of his or her activities as a licensed importer or
15 manufacturer.

16 (5) A personal firearm importer who is subject to and complies
17 with Section 27560.

18 (6) A licensed collector who is subject to and complies with
19 Section 27966.

20 (7) A California resident who acquires ownership of a firearm
21 by bequest or intestate succession if the acquisition or ownership
22 of that firearm is exempt from the provisions of Section 27545
23 pursuant to, and is in compliance with, Section 27875.

24 (f) The provisions of this section are cumulative, and shall not
25 be construed as restricting the application of any other law.
26 However, an act or omission punishable in different ways by
27 different provisions of law shall not be punished under more than
28 one provision.

29 SEC. 2. Section 27590 of the Penal Code is amended to read:

30 27590. (a) Except as provided in subdivision (b), (c), or (e),
31 a violation of this article is a misdemeanor.

32 (b) If any of the following circumstances apply, a violation of
33 this article is punishable by imprisonment pursuant to subdivision
34 (h) of Section 1170 for two, three, or four years.

35 (1) If the violation is of subdivision (a) of Section 27500.

36 (2) If the defendant has a prior conviction of violating the
37 provisions, other than Section 27535, Section 27560 involving a
38 firearm that is not a handgun, or Section 27565 involving a firearm
39 that is not a handgun, of this article or former Section 12100 of
40 this code, as Section 12100 read at any time from when it was

1 enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to
2 when it was repealed by Section 18 of Chapter 23 of the Statutes
3 of 1994, or Section 8101 of the Welfare and Institutions Code.

4 (3) If the defendant has a prior conviction of violating any
5 offense specified in Section 29905 or of a violation of Section
6 32625 or 33410, or of former Section 12560, as that section read
7 at any time from when it was enacted by Section 4 of Chapter 931
8 of the Statutes of 1965 to when it was repealed by Section 14 of
9 Chapter 9 of the Statutes of 1990, or of any provision listed in
10 Section 16590.

11 (4) If the defendant is in a prohibited class described in Chapter
12 2 (commencing with Section 29800) or Chapter 3 (commencing
13 with Section 29900) of Division 9 of this title, or Section 8100 or
14 8103 of the Welfare and Institutions Code.

15 (5) A violation of this article by a person who actively
16 participates in a “criminal street gang” as defined in Section 186.22.

17 (6) A violation of Section 27510 involving the delivery of any
18 firearm to a person who the dealer knows, or should know, is a
19 minor.

20 (c) If any of the following circumstances apply, a violation of
21 this article shall be punished by imprisonment in a county jail not
22 exceeding one year or pursuant to subdivision (h) of Section 1170,
23 or by a fine not to exceed one thousand dollars (\$1,000), or by
24 both that fine and imprisonment.

25 (1) A violation of Section 27515, 27520, ~~or~~ subdivision (b) of
26 Section 27500, *or subdivision (a) or (b) of Section 27561*.

27 (2) A violation of Section 27505 involving the sale, loan, or
28 transfer of a handgun to a minor.

29 (3) A violation of Section 27510 involving the delivery of a
30 handgun.

31 (4) A violation of subdivision (a), (c), (d), (e), or (f) of Section
32 27540 involving a handgun.

33 (5) A violation of Section 27545, *or subdivision (c) or (d) of*
34 *Section 27561* involving a handgun.

35 (6) A violation of Section 27550.

36 (d) If both of the following circumstances apply, an additional
37 term of imprisonment pursuant to subdivision (h) of Section 1170
38 for one, two, or three years shall be imposed in addition and
39 consecutive to the sentence prescribed.

1 (1) A violation of Section 27510 or subdivision (b) of Section
2 27500.

3 (2) The firearm transferred in violation of Section 27510 or
4 subdivision (b) of Section 27500 is used in the subsequent
5 commission of a felony for which a conviction is obtained and the
6 prescribed sentence is imposed.

7 (e) (1) A first violation of Section 27535 is an infraction
8 punishable by a fine of fifty dollars (\$50).

9 (2) A second violation of Section 27535 is an infraction
10 punishable by a fine of one hundred dollars (\$100).

11 (3) A third or subsequent violation of Section 27535 is a
12 misdemeanor.

13 (4) For purposes of this subdivision each application to purchase
14 a handgun in violation of Section 27535 shall be deemed a separate
15 offense.

16 *SEC. 3. No reimbursement is required by this act pursuant to*
17 *Section 6 of Article XIII B of the California Constitution because*
18 *the only costs that may be incurred by a local agency or school*
19 *district will be incurred because this act creates a new crime or*
20 *infraction, eliminates a crime or infraction, or changes the penalty*
21 *for a crime or infraction, within the meaning of Section 17556 of*
22 *the Government Code, or changes the definition of a crime within*
23 *the meaning of Section 6 of Article XIII B of the California*
24 *Constitution.*

25 ~~SECTION 1. Section 44036 of the Education Code is amended~~
26 ~~to read:~~

27 ~~44036. (a) The governing board of a school district may grant~~
28 ~~a leave of absence to an employee to appear as a witness in court~~
29 ~~other than as a litigant, or to respond to an official order from~~
30 ~~another governmental jurisdiction for reasons not brought about~~
31 ~~through the connivance or misconduct of the employee.~~

32 ~~(b) The governing board of a school district may grant a leave~~
33 ~~of absence to an employee in a position requiring certification~~
34 ~~qualifications, regularly called for jury duty in the manner provided~~
35 ~~for by law.~~

36 ~~(c) The governing board of a school district may grant a leave~~
37 ~~of absence pursuant to subdivision (a) or (b) with pay, up to the~~
38 ~~amount of the difference between the employee's regular earnings~~
39 ~~and any amount he or she receives for jury or witness fees.~~

1 ~~(d) The governing board of a school district shall not grant a~~
2 ~~paid voluntary leave of absence to a district superintendent, deputy~~
3 ~~superintendent, assistant superintendent, or associate superintendent~~
4 ~~of schools, other than for those purposes specified in subdivision~~
5 ~~(a) or (b), unless the paid voluntary leave of absence is approved~~
6 ~~by the governing board of the school district at a public meeting.~~

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