

AMENDED IN SENATE APRIL 2, 2013

**SENATE BILL**

**No. 385**

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**Introduced by Senator Block**

February 20, 2013

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~~An act to add Section 6812.5 to the Revenue and Taxation Code, relating to bulk sales. An act to amend Section 28235 of, and to add Article 6.1 (commencing with Section 27970) to Chapter 4 of Division 6 of Title 4 of Part 6 of, the Penal Code, relating to firearms.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 385, as amended, Block. ~~Bulk sales: sales and use taxes: collection of taxes: successor's liability: notifications: disclosures. Firearms: Private Patrol Operators: registration and assignment.~~

*Existing law generally regulates the ownership and transfer of firearms, but does not authorize business entities to own or register firearms.*

*This bill would establish procedures allowing Private Patrol Operators to own firearms and to assign those firearms to employees of the Private Patrol Operator (PPO) who are licensed security guards. The bill would state findings and declarations of the Legislature, and expresses the intent of the Legislature in connection with these procedures. The bill would direct the Department of Justice to modify and create forms, and charge reasonable fees for the filing and processing of those forms for these purposes and for enforcement of these provisions, including to allow the PPO to be listed as the purchaser and legal owner of a firearm, for a security guard who is assigned that firearm to be listed as the registered owner, as specified, and for a firearm custodian to be designated by the PPO. The bill would provide that an assignment for these purposes would not constitute a*

*loan, sale, or transfer of a firearm. The bill would require the security guard receiving a firearm by assignment from a PPO to undergo a background check and to possess a handgun safety certificate, as specified. The bill would require security guards, upon request by the PPO, for any reason, or upon separation of employment or revocation of the security guard's firearm qualification card, to immediately return the firearm to the PPO.*

*The bill would make other conforming changes.*

~~Existing law, the Uniform Commercial Code Bulk Sales, is a comprehensive body of law regulating bulk sales, which are defined to include a sale not in the ordinary course of the seller's business of more than ½ the seller's inventory and equipment, as specified, and which imposes specified obligations on an escrow agent for that sale.~~

~~The Sales and Use Tax Law, employment tax laws, and personal property laws impose liabilities for unpaid taxes upon the purchaser of a business under specified circumstances. Under the Sales and Use Tax Law, if any person liable for any amount under that law sells out the business or stock of goods or quits the business, the successors or assigns are required to withhold sufficient of the purchase price to cover such amount until the former owner either produces a receipt from the State Board of Equalization showing that it has been paid or produces a certificate from the board stating that no amount is due. Under that law, if the purchaser of a business or stock of goods fails to withhold from the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to have been withheld to the extent of the purchase price, valued in money.~~

~~This bill would require an escrow agent to make specified notifications in writing to a potential purchaser of a business regarding a purchaser's liabilities under the Sales and Use Tax Law. This bill would also require specified sellers of a business to provide under penalty of perjury a successor liability disclosure statement, as may be prescribed by the State Board of Equalization, to all potential purchasers or their authorized agents. By expanding the crime of perjury, 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.~~

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

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

1     SECTION 1. Article 6.1 (commencing with Section 27970) is  
2     added to Chapter 4 of Division 6 of Title 4 of Part 6 of the Penal  
3     Code, to read:

4  
5             Article 6.1. Ownership, Registration, and Assignment of  
6             Firearms by Private Patrol Operators  
7

8     27970. (a) (1) The Legislature finds and declares that current  
9     practices and statutes authorize the purchase, registration, and  
10    ownership of firearms by individuals, but not by business entities.

11    (2) It is the intent of the Legislature in enacting this chapter to  
12    allow business ownership and registration of firearms in the case  
13    of Private Patrol Operators. It is further the intent of the  
14    Legislature to establish procedures whereby a Private Patrol  
15    Operator may assign firearms it owns to its employees who are  
16    licensed to carry firearms and that the assignment of a firearm by  
17    a Private Patrol Operator to that employee shall not constitute a  
18    loan, sale, or transfer of a firearm.

19    (b) For purposes of this article, the following definitions shall  
20    apply:

21    (1) "Department" means the Department of Justice.

22    (2) "Private Patrol Operator" or "PPO" means a Private  
23    Patrol Operator licensed pursuant to Chapter 11.5 (commencing  
24    with Section 7580) of Division 3 of the Business and Professions  
25    Code.

26    27972. (a) A PPO may be the legal owner of a firearm.

27    (b) (1) The department shall modify the Dealers' Record of  
28    Sale (DROS) form to allow a PPO to be listed as the purchaser  
29    and legal owner of a firearm. The form shall also identify the status  
30    of the PPO as a sole proprietorship, partnership, or corporate  
31    entity, and include any tax identification number or other  
32    identifying number that may be required by the department.

33    (2) The department shall modify the DROS form to allow a  
34    security guard who receives a firearm from a PPO for purposes

1 of his or her employment with that PPO to be listed as the  
2 registered owner of the firearm.

3 (3) The department shall also modify the DROS form to require  
4 the PPO to designate a “firearms custodian” for the PPO. The  
5 firearms custodian shall possess a valid firearm qualification card  
6 issued by the Department of Consumer Affairs.

7 (4) A security guard who receives a firearm pursuant to a  
8 certificate of assignment is subject to a background check by the  
9 department, pursuant to Section 28220. A security guard shall  
10 possess a valid handguns safety certificate prior to receiving a  
11 firearm pursuant to a Certificate of Assignment.

12 (c) The PPO shall, on a separate form, and in a manner  
13 prescribed by the department, identify the person who is designated  
14 by the PPO as the firearms custodian for the PPO. If a firearms  
15 custodian ceases to be employed by the PPO, or otherwise becomes  
16 ineligible to be the firearms custodian, the PPO shall inform the  
17 department of that fact, in a manner prescribed by the department,  
18 and the PPO shall have 30 days to designate a replacement  
19 firearms custodian. No PPO may assign a firearm pursuant to this  
20 article if there is no designated firearms custodian for the PPO.

21 (d) (1) The department shall prescribe a “Certificate of  
22 Assignment” or “COA.” The COA shall contain the same fields  
23 as the DROS form, and shall be used to identify the employee of  
24 the PPO who has been assigned a firearm by the PPO pursuant  
25 to this article.

26 (2) Upon the PPO assigning a firearm to an employee who is  
27 a security guard licensed pursuant to Chapter 11.5 (commencing  
28 with Section 7580) of Division 3 of the Business and Professions  
29 Code, the licensed security guard shall complete the COA, and  
30 the PPO shall file the COA with the department in a timely manner  
31 as prescribed by the department.

32 27974. The department shall charge a fee not to exceed the  
33 reasonable costs to the department for filing and processing a  
34 form identifying the firearms custodian of the PPO, for filing and  
35 processing a COA, and for costs incurred in enforcing the  
36 provisions of this article, including, but not limited to, processing  
37 forms required by this article, and entering information obtained  
38 pursuant to this article into the department’s Automated Firearms  
39 System and other databases as deemed necessary by the

1 department. The fees shall be deposited in the Dealers' Record of  
2 Sale Special Account.

3 27976. If the PPO ceases to do business, ceases to possess a  
4 valid PPO license as determined by the Director of Consumer  
5 Affairs, ceases as a business entity, or changes its type of business  
6 formation, the PPO shall, within 30 days and unless otherwise  
7 prohibited by law, complete new DROS forms for all PPO-owned  
8 firearms and transfer those firearms to a new owner.

9 27978. Notwithstanding any other law, an assignment of a  
10 firearm pursuant to this article is not a loan, sale, or transfer of  
11 a firearm.

12 27980. A security guard shall, immediately upon the PPO's  
13 request, for any reason, or immediately upon separation of  
14 employment or revocation of the firearm qualification card, return  
15 the firearm to the PPO. This article does not limit the right of a  
16 licensed security guard employee to use, possess, or otherwise  
17 lawfully carry a firearm owned by that employee.

18 SEC. 2. Section 28235 of the Penal Code is amended to read:

19 28235. All money received by the department pursuant to this  
20 article shall be deposited in the Dealers' Record of Sale Special  
21 Account of the General Fund, which is hereby created, to be  
22 available, upon appropriation by the Legislature, for expenditure  
23 by the department to offset the costs incurred pursuant to any of  
24 the following:

25 (a) This article.

26 (b) Section 18910.

27 (c) Section 27555.

28 (d) Subdivisions (d) and (e) of Section 27560.

29 (e) Article 6.1 (commencing with Section 27970) of Chapter 4.

30 ~~(e)~~

31 (f) Article 6 (commencing with Section 28450).

32 ~~(f)~~

33 (g) Section 31110.

34 ~~(g)~~

35 (h) Section 31115.

36 ~~(h)~~

37 (i) Subdivision (a) of Section 32020.

38 ~~(i)~~

39 (j) Section 32670.

40 ~~(j)~~

1 (k) Section 33320.

2 SECTION 1. ~~Section 6812.5 is added to the Revenue and~~  
3 ~~Taxation Code, to read:~~

4 ~~6812.5. (a) For a bulk sale handled through an escrow, the~~  
5 ~~escrow agent shall notify in writing a potential purchaser of a~~  
6 ~~business that is required to hold a permit under this part of the~~  
7 ~~following information:~~

8 ~~(1) That if a person is liable for any amount under this part sells~~  
9 ~~his or her business or stock of goods, the purchaser must withhold~~  
10 ~~a sufficient amount of the purchase price to cover that amount,~~  
11 ~~until the seller produces a receipt from the board showing payment~~  
12 ~~or no amount due.~~

13 ~~(2) That a tax clearance certificate is available from the board~~  
14 ~~that will identify amounts owed under this part by the seller of the~~  
15 ~~business.~~

16 ~~(3) That the purchaser may be personally liable for the payment~~  
17 ~~of the amounts owed by the seller under this part to the extent of~~  
18 ~~the purchase price.~~

19 ~~(b) If a person liable for any amount due under this part sells~~  
20 ~~out his or her business or stock of goods or quits the business, the~~  
21 ~~person shall provide under penalty of perjury a successor liability~~  
22 ~~disclosure statement, as may be prescribed by the board, to all~~  
23 ~~potential purchasers or their authorized agents to identify any~~  
24 ~~unpaid amounts due under this part.~~

25 ~~(e) For purposes of this section, “bulk sale” has the same~~  
26 ~~meaning as defined in paragraph (3) of subdivision (a) of Section~~  
27 ~~6102 of the Commercial Code.~~

28 SEC. 2. ~~No reimbursement is required by this act pursuant to~~  
29 ~~Section 6 of Article XIII B of the California Constitution because~~  
30 ~~the only costs that may be incurred by a local agency or school~~  
31 ~~district will be incurred because this act creates a new crime or~~  
32 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
33 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
34 ~~the Government Code, or changes the definition of a crime within~~  
35 ~~the meaning of Section 6 of Article XIII B of the California~~  
36 ~~Constitution.~~

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