

SENATE THIRD READING
SB 2 (Portantino)
As Amended June 29, 2023
Majority vote

SUMMARY

Removes the 'good cause' requirement for concealed carry weapons licenses (CCW licenses) and creates a new issuing process for CCW licenses following the United States (U.S.) Supreme Court ruling in *New York Rifle and Pistol Association v. Bruen* 142 S.Ct. 2111.

Major Provisions

- 1) Provides that when a person applies for a new or renewed CCW license to carry a pistol, revolver, or other firearm capable of being concealed on the person, the sheriff or police chief of a jurisdiction shall issue or renew the CCW license upon proof that the applicant is not a disqualified person, as specified, is at least 21 years of age, is the recorded owner of the firearm, has completed a training course, as provided, and is a resident of, or employed in, the jurisdiction.
- 2) States that, for new CCW applicants, the required course of training must meet all of the following minimum criteria:
 - a) No less than 16 hours in length;
 - b) Instruction on safe storage, legal transportation methods, laws governing where CCW licensees may carry, and laws regarding permissible use of lethal force in self-defense;
 - c) A component of at least one hour on mental health and mental health resources;
 - d) Except for the mental health component, the course shall be taught and supervised by DOJ certified firearm instructors;
 - e) Require students to pass a written examination; and,
 - f) Live-fire exercises, as specified.
- 3) Provides that, for renewal CCW applicants, the required course of training shall be no less than eight hours and shall satisfy the other minimum criteria above.
- 4) Requires the Attorney General to convene a committee to revise the standard application form for licenses.
- 5) Provides that the committee convened by the Attorney General shall consist of one representative each from the California State Sheriffs Association, California Police Chiefs Association, and the DOJ.
- 6) Sets forth a procedure by which the design standards for licenses issued by local agencies, which may be used as proof of licensure throughout the state, may be issued and subsequently revised.

- 7) States that, among other things, a standard application form for a CCW license must require information regarding an applicant's prior detentions, arrests, criminal convictions, prior specified court orders, prior mental health commitments, whether the applicant has been previously denied a license to carry a firearm, or has had it revoked, three character references, including at least one cohabitant or specified domestic companion, if applicable, and other information sufficient to make a determination as to whether the applicant is a disqualified person.
- 8) Provides that completed applications for licenses shall contain all information required by the application, as determined by the licensing authority.
- 9) Mandates that a CCW license contain a licensee's picture, fingerprint, date of birth, an issuance and expiration date, the model of firearm, and a Criminal Identification and Information number, among other things..
- 10) Permits a licensing authority to collect CCW license processing and enforcement related fees and states that the fees must reflect reasonable costs incurred by the authority.
- 11) Provides that local fees may be increased to reflect increases in the licensing authority's reasonable costs, but in no case shall they exceed those reasonable costs.
- 12) Provides that a CCW license shall be revoked if at any time the licensing authority determines or is notified by the DOJ of any of the following:
 - a) A licensee is prohibited by state or federal law from owning or purchasing a firearm;
 - b) A licensee has breached any of the conditions or restrictions relating to concealed carry licenses, as specified;
 - c) The licensee provided inaccurate or incomplete information on their application; or,
 - d) The licensee has become a disqualified person, as specified.
- 13) Prohibits a licensee shall not do any of the following while carrying a firearm as authorized by a CCW license:
 - a) Consume an alcoholic beverage or controlled substance, as specified;
 - b) Be in a place having a primary purpose of dispensing alcoholic beverages for onsite consumption;
 - c) Be under the influence of any alcoholic beverage, medication, or controlled substance, as specified;
 - d) Carry a firearm not listed on the license or a firearm for which they are not the recorded owner, unless they are a peace officer and have their service firearm;
 - e) Falsely represent to a person that the licensee is a peace officer;
 - f) Engage in an unjustified display of a deadly weapon;

- g) Fail to carry the license on their person;
 - h) Impede a peace officer;
 - i) Refuse to display the license or to provide the firearm to a peace officer upon demand; and,
 - j) Violate any federal, state, or local criminal law.
- 14) States that a licensing authority may include additional reasonable restrictions or conditions as to the time, place, manner, and circumstances under which a CCW firearm may be carried.
- 15) Prohibits a CCW licensee from carrying more than two firearms under their control at one time.
- 16) Provides that unless a court makes a contrary determination, an applicant shall be deemed to be a disqualified person to receive or renew a license if the applicant:
- a) Is reasonably likely to be a danger to self, or others, as provided;
 - b) Has been convicted of contempt of court, as specified;
 - c) Has been subject to a specified restraining order, protective order, or other court order unless that order expired, vacated, or was otherwise cancelled more than five years prior to the application;
 - d) Has been convicted of specified offenses within the previous 10 years;
 - e) Has engaged in an unlawful or reckless use, display or brandishing of a firearm;
 - f) In the previous 10 years, has been charged with specified offenses that were dismissed pursuant to a plea or a waiver, as specified;
 - g) In the previous five years, has been committed to or incarcerated in county jail or state prison for, or on probation, parole, post-release community supervision, or mandatory supervision, as a result of a conviction of an offense, an element of which involves controlled substances;
 - h) Within the previous 10 years has experienced the loss or theft of multiple firearms due to the applicant's lack of compliance with applicable laws; and,
 - i) Failed to report a loss of a firearm as required pursuant to existing law.
- 17) States that in order to determine whether an applicant is a disqualified person to receive or renew a license, the licensing authority shall conduct an investigation that meets, but is not limited to, specified minimum requirements.
- 18) Requires the DOJ to develop a "Request for Hearing to Challenge Disqualified Person Determination" form, and provides that an applicant shall have 30 days after the receipt of the notice of denial to request a hearing to review the denial or revocation.

- 19) Provides that an applicant who has requested a hearing due to a denial or revocation shall be given a court hearing, after first exhausting any appeals required by the licensing authority, and specifies various procedural rules governing the court hearings.
- 20) Specifies that, in the appeal hearings, the district attorney shall bear the burden of showing, by a preponderance of the evidence, that the applicant is not a qualified person, and specifies how the court must rule if the district attorney meets, or does not meet, their burden.
- 21) Authorizes the DOJ to adopt emergency regulations to implement specified portions of these provisions, exempts such regulations from review by the Officer of Administrative Law, and limits the effect of the regulations to two years after the effective date of these provisions.
- 22) Enumerates places in which CCW licensees are not allow to carry, including: schools, courts, government buildings, correctional institutions, hospitals and other medical service facilities, airports, public transportation, specified public gatherings, businesses where liquor is sold for onsite consumption, public parks or athletic facilities, casinos, sports arenas, libraries, churches, zoos, museums, amusement parks, banks, voting centers, and any other privately-owned commercial establishment open to the public unless that establishment has a sign indicating licensees are allowed to possess their firearm, or if the firearm is transported as authorized by law.
- 23) Contains limited exceptions to the place restrictions related to the transport of a firearm within or in the immediate area surrounding a vehicle.
- 24) Adds specified firearm-possession offenses to the list of misdemeanors which, upon conviction, prohibit a person from possessing a firearm for a period of 10 years if the conviction occurs on or after January 1, 2024.
- 25) Corrects cross-references to regarding the Dealers' Record of Sale (DROS) fund.
- 26) Contains a severability clause.

COMMENTS

Second Amendment Jurisprudence and CCW Laws: In many states throughout the U.S., people are generally prohibited from carrying a concealed firearm in public unless they have a CCW license. States vary in what requirements need to be met in order to obtain a CCW license. In *N.Y. State Rifle & Pistol Ass'n v. Bruen* (hereafter *Bruen*), *supra*, 142 S.Ct. 2111, the United States Supreme Court found a New York state requirement that CCW applicants demonstrate a specific safety reason (i.e. "good cause") as to why they need to carry a concealed firearm to be unconstitutional. In finding the requirement unconstitutional, the Court held that the Second Amendment protects, "an individual's right to carry a handgun for self-defense outside the home." (*Id.* at 2122.) The Court stated that there was, "no other constitutional right that an individual may exercise only after demonstrating to government officers some special need." (*Id.* at 2156.) It then established a new test for determining whether a government restriction on carrying a firearm violates the Second Amendment as follows:

"...[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest.

Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' "

(*Id.* at 2126.)

Although it invalidated the New York statute, and by its reasoning had the same effect on California's similar CCW statute, the Court made clear that regulations consistent with historical precedent, such as those that prohibit weapons in "sensitive places," would likely pass constitutional muster. (*Bruen, supra*, 142 S.Ct. at 2124, 2133-34.) However, the Court gave little guidance on what constitutes a sensitive place, beyond stating that "expanding the category of 'sensitive places' to all places of public congregation that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly." (*Id.* at 2133-34.) Furthermore, the Court intimated that CCW regimes can still require applicants to undergo a background check or pass firearm safety courses, and that these requirements are suitable to ensure only "law-abiding, responsible citizens" are granted CCWs. (*Id.* at 2138, fn. 9.) The Court chose not to undertake an exhaustive historical analysis of what is constitutional and what is not when it comes to CCWs. (*Id.* at 1234.) As such, it acknowledged that applying constitutional principles to novel modern conditions is difficult, but nevertheless concluded that judges are equipped with the proper decision-making skills to answer such questions. (*Ibid.*) In reaching its decision, the Court also recognized that California is among the limited number of states that have an analogue to New York's "proper cause" standard in their concealed carry laws. (*Bruen, supra*, 142 S.Ct. at 2124.) Consequently, on June 24, 2022, the California Attorney General issued a "Legal Alert," expressing his view that the Court's decision renders California's "good cause" standard to secure a permit to carry a concealed weapon in most public places unconstitutional and unenforceable. (Attorney General Rob Bonta. *Legal Alert*. (June 24, 2022) <<https://oag.ca.gov/system/files/media/legal-alert-oag-2022-02.pdf>> [as of Jun. 21, 2023].)

This bill seeks to update and restructure California's CCW laws in light of the *Bruen* decision. Put briefly, it does so by listing conduct and behavior that would disqualify a person from being considered a "law-abiding, responsible citizen." It also lists numerous locations that are considered sensitive, and where a CCW licensee may not carry their firearm.

As the Supreme Court did not undertake an exhaustive historical analysis, it is an open question what provisions of this bill are and are not constitutional. Already, there have been varied, and at times, curious court decisions made as a result of the *Bruen* case. For example, the Fifth Circuit Court of Appeals invalidated a federal statute prohibiting a defendant from possessing a firearm pursuant to a domestic violence court order, even after the defendant was involved in five shootings over the course of approximately one month. (*U.S. v. Rahimi* (2023) 61 F.4th 443.)

That said, New York and New Jersey have passed CCW laws substantially similar to the provisions of this bill. (Buffalo News. *New York amends concealed carry law after legal challenges from gun owners*. (Updated May 26, 2023)

<https://buffalonews.com/news/local/new-york-amends-concealed-carry-law-legal-challenges-buffalo-mass-shooting/article_6ed42e82-ef32-11ed-90b8-33e52d67d2a3.html#:~:text=New%20York%20amends%20concealed%20carry%20law%20after%20legal%20challenges%20from%20gun%20owners,-Jay%20Tokasz&text=Among%20the%20key%20elements%20of,buildings%20and%20houses%20of%20worship.> [as of Jun. 21, 2023]; NorthJersey.com. *New Jersey appeals decision that*

upended restrictions on concealed carry. (Updated May 23, 2023)

<<https://www.northjersey.com/story/news/new-jersey/2023/05/23/nj-gun-law-state-appeals-decision-that-overturned-concealed-carry/70247615007/>> [as of Jun. 21, 2023].) Both states' laws have been challenged in federal court and the ultimate constitutionality of the laws remains to be seen. (*Ibid.*) This bill faces a similar situation were it to become law. In this respect, it should be noted that this bill contains a severability clause.

According to the Author

"Gun violence continues to plague our communities. More guns in more places means more people are going to lose their lives. Although crime rates dropped throughout the country from 1977 to 2014, states that rolled back their firearm safety laws have bucked that trend in recent years – for example, the adoption of right-to-carry laws by a state led to a 13% to 15% increase in violent crime over the next 10 years. The presence of firearms in public increases the dangers of intentional or accidental gun violence – at the workplace, at the movies, or on the road. One study showed that states with permissive right to carry laws experience 29% more workplace homicides than states with more restrictive licensing requirements. The Supreme Court's decision in *New York Rifle and Pistol Association v. Bruen* changed the way states assess who may carry a concealed weapon in public, but it did not remove the ability of states to address this critical issue. In fact, it provided a roadmap for doing so. Bruen affirmed the ability of states to keep firearms out of the hands of dangerous individuals and out of certain sensitive places. With SB 2, California does just that. It provides objective, reasonable guidance that prevents CCW permits from being issued to dangerous individuals and provides a list of places where weapons may not be carried. These 'sensitive places' range from areas where other rights are exercised – like the voting booth – to areas where sensitive people gather – like parks and playgrounds. California is proud of its record on gun safety and will not stop working to improve our laws to protect the public."

Arguments in Support

According to the bill's co-sponsor, the DOJ, "...Under SB 2, California's 'good moral character' standard will be updated to require that, prior to issuing a concealed carry license, the licensing authority must determine that the applicant is not a disqualified individual based on an assessment of defined and objective criteria. A licensing authority will be required to deny a license or renewal application if it determines that the applicant has committed certain acts, been convicted of certain crimes, or has been the subject of certain restraining orders, all of which indicate, in California's view, that it is reasonably likely that the applicant has been or is reasonably likely to be a danger to themselves or others. This bill further strengthens current law by expanding gun-free zones, imposing more stringent training requirements, setting the minimum age at 21 years, and establishing a more uniform licensing standard. Lastly, SB 2 will clean up outdated provisions and cross- references to other statutory provisions relating to the Dealer Record of Sale (DROS) fee, the supplemental fee, and the authority of Department of Justice (DOJ) in the regulation of the sale of firearm precursor parts and authorization to issue a firearm precursor part vendor license.

"The Bruen decision has resulted in a substantial increase in applications for concealed carry weapon permits, which will ultimately result in more guns being carried in our communities. It is indisputable that more guns in public leads to an increased risk of violence. SB 2 strikes the appropriate balance between respecting Californians' rights to keep and bear arms and the public's equally weighty interests in having safe public spaces.

"California continues to have one of the lowest gun death rates in the nation because of this state's commitment to commonsense gun safety laws like SB 2..."

Arguments in Opposition

According to the *Gun Owners of California*, "...While it is true that the legislature has a compelling interest in protecting both individual rights and public safety, it's important to note that the legislature cannot balance one set of rights by diminishing others. The factual record is very clear: lawful CCW holders are not killing, injuring, or traumatizing individuals with acts of gun violence or terrorism. The existing CCW system operated by the California Department of Justice and other issuing authorities has everything needed for law enforcement to effectively do their job. The proof is that CCW holders in California are among the most law-abiding citizens in the state.

"Senator, as with your SB 918 of last year, you quoted the rulings of the Ninth Circuit Court of Appeals regarding historical elements of concealed carry laws over the past 700 years in England and America. You also defined Justice Antonin Scalia's recognition of 'sensitive places' in *Heller v DC*, as descriptive and not as exclusive when he mentioned schools and government buildings. By your definition, the legislature can designate any public place as sensitive, however this is clearly not what Justice Scalia said. He was specific in his comments regarding schools and government buildings. Further, in *NYSRPA v Bruen*, Justice Clarence Thomas held that while his decision is not a straight-jacket preventing state governments from imposing rules and requirements, neither is it a blank check for those governments to legislate in excess. Every rule and regulation must be objective and must have a historical analog to the text, history and tradition of the Second Amendment at the founding. He specifically warned against expanding the definition of sensitive places to include vast areas used by the public at-large. The concurring opinion by Justice Brett Kavanaugh gave clear direction for the 6 states who have 'may issue' regimes for the issuance of CCWs. He stated: 'Going forward, therefore, the 43 States that employ objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so. Likewise, the 6 States including New York potentially affected by today's decision may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements like those used by the 43 shall issue States.'

"The provisions of SB 2 are the antithesis of the objective licensing requirements used by the 43 shall issue states. Justice Thomas also warned lower courts to refrain from approving 'outlier' regimes and regulations because they are unconstitutional. The Supreme Court made it clear that any CCW regime that is based on 'subjective' criteria is unconstitutional. SB 2 is playing a shell game by removing the statutory language that allows issuing authorities to use subjective 'good cause' requirements in the issuance or rejection of CCWs, shifting the subjective requirements to a 'good moral character' provision in the law that this bill describes as a 'disqualified person'. Granting the authority to issuing agencies to base permit issuance on subjective evaluations of character references and social media posts is highly prejudicial. This is clearly an effort to use someone's 1st Amendment right of free speech to infringe on their Second Amendment right. To reiterate what we stated last year, this doesn't pass the chuckle test.

"Again, each of the studies quoted by the author can only show correlation but not causation. An example of this would be that if a statistical study would show that most of the people who filed for divorce also liked bacon, this would be an example of association or correlation. The types of studies cited in this finding would say that it is obvious that eating bacon causes divorce.

Although this is a crude and simple example, it is in fact a reflection of the types of conclusions met by these particular studies.

"There are also significant problems with finding (h). As previously mentioned, the studies cited are irrelevant given that they were conducted years prior and over a dozen new states have become 'right to carry'. Moreover, the bill unfairly classifies 18-year-old Californians as 'half-citizens' by denying them the right to protect themselves with a firearm from the threat of great bodily injury or death; this creates an ethical and constitutional problem that is being brushed under the carpet. If they are old enough to vote and to serve in our nation's military, they are old enough to exercise each one of their Constitutional rights including the Second Amendment. A Federal District Court recently ruled in *Andrews v McCraw* that this is unconstitutional.

"The provisions requiring renewing CCW holders to submit a new set of fingerprints is retaliatory. It's no secret that the DOJ currently maintains a set on file and preventing spouses from having each other's firearms on both of permits is nothing but punitive. Last I checked, people cannot change their fingerprints, except, of course in the movies. The cost of a new set of fingerprints will be approximately \$100, thereby making it more expensive, negatively impacting lower-income applicants to whom \$100 is a significant barrier and an unrealistic financial burden.

"In closing, the severability clause in the legislation is a clear indication and understanding that many components (if not all) of this legislation will ultimately be found unconstitutional. In due course, SB 2 will be a costly and unnecessary blemish for California to bear. This can be avoided."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund, Fingerprint Fees Account) to DOJ in the tens of millions of dollars annually. DOJ reports costs of \$9.8 million in fiscal year (FY) 2023-24, \$17.2 million in FY 2024-25, \$16.8 million in FY 2025-26, and \$13.9 million annually ongoing. These funds would support staffing for legal challenges to the new CCW standards, updating firearms database systems, promulgating regulations, performing background checks, processing fingerprint scans, and other workload created by this bill. DOJ reports it needs delayed implementation of July 1, 2027, to complete the required IT enhancements. Per DOJ, the monies in the Dealers' Record of Sale Account are insufficient to fund the duties required by this bill.
- 2) Costs (Trial Court Trust Fund, General Fund) of an unknown but significant amount to the courts to hear cases arising from this bill. If a licensing authority denies a person's CCW application because they are disqualified from obtaining a permit, this bill allows the applicant to seek court review of the licensing authority's decision. An hour of court time costs approximately \$1,000. If 500 people seek court review of denied CCW applications and each case takes an hour of court time, court costs would be approximately \$500,000. Actual costs will depend on the number of applications denied and the amount of court time needed to resolve each case. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund. The 2023-24 budget includes \$105 million from the General Fund to backfill declining revenue to the Trial Court Trust Fund.

- 3) Potentially reimbursable costs (local funds, General Fund) of an unknown but significant amount to law enforcement agencies that issue CCW licenses, typically county sheriffs' offices and city police departments. To the extent this bill requires an issuing authority to undertake a more detailed investigation and review of a CCW application than required under existing law, issuing authorities will likely incur significant workload costs. Licensing authorities have seen a significant increase in the number of CCW applications submitted since the Supreme Court's decision in *Bruen*. Costs for processing CCW applications may taper off after this initial influx of applications recedes. General Fund costs will depend on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

VOTES

SENATE FLOOR: 29-9-2

YES: Allen, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener

NO: Alvarado-Gil, Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk

ABS, ABST OR NV: Hurtado, Roth

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bonta, Bryan, Ortega, Santiago, Jackson

NO: Alanis, Lackey

ASM APPROPRIATIONS: 11-5-0

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Wilson

NO: Megan Dahle, Dixon, Mathis, Sanchez, Soria

UPDATED

VERSION: June 29, 2023

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