
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 241 **Hearing Date:** March 14, 2023
Author: Min
Version: January 25, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: dealer requirements*

HISTORY

Source: Brady United Against Gun Violence
Brady California

Prior Legislation: SB 1384 (Min), Ch. 995, Stats. of 2022
AB 1064 (Muratsuchi, 2019), held in Assembly Appropriations
SB 220 (Hill, 2019), died on Assembly Floor
SB 464 (Hill, 2017), vetoed by the Governor
AB 2459 (McCarty, 2016), failed in Assembly Privacy

Support: Everytown for Gun Safety Action Fund; Los Angeles County Board of Supervisors; Prosecutors Alliance California; Women for American Values and Ethics Action Fund

Opposition: None known

PURPOSE

The purpose of this bill is to require firearms dealers and their employees to annually complete an online training course and certification developed by the Department of Justice.

Existing law generally prohibits the sale, lease or transfer of firearms unless the person has been issued a license by the California Department of Justice, and establishes various exceptions to this prohibition. (Penal Code §§26500 – 26625)

Existing law requires that prospective firearms dealers (licensees) satisfy the following requirements:

- Has a valid federal firearms license from the federal Bureau of Alcohol, Tobacco and Firearms (ATF).
- Has any regulatory or business license, or licenses, required by local government.
- Has a valid seller's permit issued by the State Board of Equalization
- Has a Certificate of Eligibility issued by DOJ demonstrating that the applicant is not prohibited from acquiring or possessing firearms
- Has an annual license granted by the licensing authority of any city, county, or city and county.

- Is on the DOJ's centralized list of all persons licensed to sell firearms. (Penal Code §26700(a)-(f).)

Existing law provides that a license to sell firearms is subject to forfeiture for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Penal Code §26800(a).)

Existing law provides that the DOJ may assess specified civil fines against a licensee for any breach of a prohibition or requirement that subjects the licensee to forfeiture of their license to sell firearms. (Penal Code §26800(b).)

Existing law prohibits a dealer from delivering a firearm unless the person receiving the firearm presents to the dealer a valid firearm safety certificate, or, in the case of a handgun, an unexpired handgun safety certificate, and requires the dealer to retain a photocopy of the certificate as proof of compliance with this section. (Penal Code §26840(a).)

Existing law provides that no firearms dealer may deliver a handgun or long gun unless the recipient performs a safe handling demonstration with that handgun or long gun. Existing law also enumerates the elements of these safe handling demonstrations. (Penal Code §§ 26850-26860.)

Existing law provides that a licensee shall require any agent or employee who handles, sells or delivers firearms to obtain and provide to the licensee a certificate of eligibility from the DOJ verifying that the agent or employee is not prohibited from acquiring or possessing firearms. (Penal Code §26915(a).)

Existing law provides that the DOJ shall notify the firearms licensee in the event that the agent or employee who was a certificate of eligibility is or becomes prohibited from possessing firearms. (Penal Code §26915(b).)

Existing law requires a licensee to prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to existing law from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open specified locking devices. (Penal Code §26915(d).)

This bill provides that, commencing July 1, 2025, every licensee, and every employee thereof who handles or processes the sale, loan or transfer of firearms or ammunition in the course of their normal duties, shall annually complete a training course and certification.

This bill provides that every licensee shall maintain records of certification for all employees on the business premises and make those records available to any agent of the DOJ or a licensing authority conducting an inspection of the licensee's premises.

This bill requires the DOJ, by no later than January 1, 2025, to develop and implement a course of training for licensees and their employees, which must include instruction on all of the following topics:

- Federal and state laws governing sales and transfers of firearms and ammunition.

- How to recognize and identify straw purchasers and fraudulent activity.
- Indicators that a person is attempting to purchase a firearm illegally.
- How to recognize and identify indicators that an individual intends to use a firearm for unlawful purposes.
- How to recognize and identify indicators that an individual intends to use a firearm for self-harm.
- How to prevent theft or burglary of firearms and ammunition.
- How to respond to circumstances described above, and any applicable reporting requirement.
- How to teach consumers rules of firearm safety, including, but not limited to, the safe handling and storage of firearms.
- Other reasonable business practices that the DOJ determines will deter gun trafficking or the unlawful use of firearms.

This bill provides that the training shall be available in an online format and shall include an examination with not fewer than 20 questions derived from the course materials and intended to confirm that a course participant has learned the information covered by the course.

This bill provides that a participant that answers at least 70 percent of the examination questions correctly shall receive a printable certificate of completion valid for one year from the date of completion.

This bill requires the DOJ to prepare supplemental written materials that shall be available to all course participants to print and shall include the following:

- An outline of specified indicators that a prospective firearm transferee may be involved in gun trafficking or straw purchasing.
- How to ascertain whether a prospective firearm purchaser is lawfully purchasing a firearm, including by asking questions of the purchaser.
- How to report a suspected fraudulent firearm purchase to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and to the federal Department of Justice.

This bill provides that the DOJ shall regularly review the training materials and update them as necessary.

This bill specifies that its provisions do not preclude any local authority from requiring a more stringent requirement regarding the training of firearm licensees and their employees.

COMMENTS

1. Need for This Bill

According to the Author:

To aid the state's efforts to end gun violence, this bill will help to reduce the proliferation of guns in communities across California by requiring federally licensed gun dealers to undergo mandatory training to prevent theft, fraud, and illegal purchases. Many other industries require training to reduce harm to the public, and the firearm industry should be no exception. This training would enhance protections against illegal firearm purchases and put in place responsible sales practices to ensure that every legal gun sale is thoroughly scrutinized by the person processing the transaction.

The mandatory training reflects similar public safety trends that led to the recent Responsible Beverage Service (RBS) testing for restaurant employees as administered under the Alcoholic Beverage Control. By requiring restaurant servers to undergo safety training to prevent underage drinking or to identify the signs of over serving patrons, RBS is a key tool to help reduce the risks of drunk driving and subsequent harm to communities. Similarly, giving firearm dealers the tools to spot theft or fraudulent purchases, dealers can bolster our ability to prevent illegal firearm sales that too often lead to gun violence and other nefarious activities.

2. Gun Store Thefts and Straw Purchases

Thefts from licensed gun retailers have been a persistent problem in California. In 2015, according to data compiled by the ATF and California DOJ, more than 400 guns were reported stolen from gun stores. The following year, the Sacramento area alone saw five gun store thefts in a period of less than three months, during which more than 200 guns were stolen.¹ Many of these thefts involved the perpetrators ramming vehicles through storefronts, bypassing any security measures. Between 2012 and 2019, 1,937 guns were reported stolen from federally licensed gun dealers in California, the 7th highest rate of theft for any state during that period.² However, the rate of gun store thefts seems to have tapered slightly in recent years since peaking in 2016 (690), with 208 reported thefts in 2021.³

Another practice contributing to the illicit gun market is "straw purchasing," the illegal purchase of a firearm by one person for another. Data compiled by Giffords Law Center to Prevent Gun Violence illustrates the problem:

Data from a national survey of firearm licensees suggests that there are more than 30,000 attempted straw purchases each year. A representative survey found that more

¹ "Gun Stores in Northern California Getting Hit Harder by Thieves." *NBC Bay Area*. 1 November 2016.

<https://www.nbcbayarea.com/news/local/gun-stores-in-northern-california-getting-hit-harder-by-thieves/2010754/#ixzz4aandO02M>; that year (2016) the ATF reported 690 thefts from licensed dealers

² "Gun theft in the United States: A state-by-state analysis." *The Center for American Progress*. 4 March 2020.

<https://www.americanprogress.org/article/gun-theft-united-states-state-state-analysis/>

³ "Federal Firearms Licensee Theft/Loss Report." *Bureau of Alcohol, Tobacco, Firearms and Explosives*. January 1, 2021 – December 31, 2021. <https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2021>

than two-thirds of dealers experienced at least one attempted straw purchase in the year preceding the survey. Researchers have also found that gun dealers are willing to make gun sales under conditions that suggest straw purchases. In one investigation, one in five gun sellers were willing to sell guns to people explicitly asking to buy firearms on behalf of someone else.⁴

Existing California law makes it illegal for any corporation, person or dealer to sell, loan or transfer a firearm to anyone they know or have cause to believe is not the actual purchaser or the person actually being loaned the firearm, if they know that the firearm is to be subsequently sold or transferred in violation of various requirements.⁵ Existing law also prohibits a person from acquiring a firearm with the intention of selling, loaning, or transferring it in violation of the requirement that private sales or transfers be conducted through a licensed dealer.⁶ However, proving these crimes in court can be a challenge, as prosecutors must show evidence connecting the straw purchaser and person for whom they are purchasing the gun. For instance, a straw purchaser could claim that the gun was stolen from their house, or was sold to someone else who then sold it to the intended recipient. This bill ostensibly seeks to curb gun store theft and straw purchasing proactively via mandatory training for licensees and their employees on these practices and how to identify them among potential buyers.

3. Firearms Dealers Licensing and Employee Requirements

Federal law requires firearms dealers to obtain a license (also known as a “federal firearms license,” or “FFL”) through the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). An FFL is necessary but not sufficient for obtaining a firearms dealer license in California. Additional requirements include any business license required by local government, a seller’s permit issued by the California Department of Tax and Fee Administration, a seller’s license issued by the local licensing authority of a local government, a certificate of eligibility (background check) issued by the DOJ, and being recorded on the DOJ’s centralized list of firearms dealers.⁷ State law requires employees of firearm licensees to provide their employers with a certificate of eligibility from the DOJ, verifying that they are not prohibited from acquiring or possessing firearms.⁸ Should the employee later become prohibited from acquiring or possessing a firearm, the DOJ must notify the licensee.⁹ However, it is on the licensee to prevent any employee or agent who is a prohibited person from coming into contact with a firearm or accessing the means to open certain locking devices.¹⁰

Existing law imposes no training requirements on licensed gun dealers in California. This bill requires all licensees and their employees to annually complete an online training, examination and certification program developed by the DOJ. The bill additionally requires licensees to maintain records of employee certification and make those records available to the DOJ upon request. The training required under the bill must cover a host of topics, including state and federal laws applicable to gun dealers, how to recognize straw purchasing and other illegal activity, how to prevent theft or burglary of firearms, and how to teach consumers about firearm

⁴ <https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/trafficking-straw-purchasing/>

⁵ Penal Code §27515.

⁶ Penal Code §27520(b).

⁷ Penal Code §26700

⁸ Penal Code §26915(a)

⁹ Penal Code §26915(b)

¹⁰ Penal Code §26915(d)

safety, among other issues. Many of the topics required to be included in the licensee training program are arguably outside the DOJ's expertise, including how to recognize indicators that an individual intends to use a firearm for unlawful purposes or self-harm, and how to teach consumers about firearm safety, particularly with regard to firearm handling and storage. The Author may wish to either narrow the scope of the required topics in consultation with the DOJ or authorize DOJ to contract with another entity to develop the training program.

4. Recent Legislation

The provisions of this bill were originally included in SB 1384 (Min, Ch. 995, Stats. of 2022), a more expansive bill regarding firearm licensee physical security requirements, but were amended out in Assembly Appropriations. The provisions of this bill are virtually identical to the training provisions initially included in SB 1384. SB 1384 passed out of this committee by a vote of 4-1.

5. Argument in Support

According to the bill's sponsor, Brady Campaign California:

Despite [...] substantial risks and the fact that gun dealers can play a critical role in preventing violence in our communities, they are not sufficiently regulated. The ATF considers dealers to be “the first line in maintaining the security and lawful transfer of firearms” but it merely issues guidance on safe business practices that dealers can adopt on a voluntary basis and it provides almost no oversight of those business practices.¹¹ For example, there are no federal laws or regulations that require gun dealers to train their employees on recognizing signs of illegal activity. California has worked to fill many of these gaps, including through last year's SB 1384 (Min), but state gun dealer standards and oversight must be further strengthened to create an environment where dealers are trained on the tools they need to prevent gun trafficking and understand their responsibility to engage in responsible business practices.

The role that gun dealers and their employees can play in preventing gun violence cannot be overstated. This bill simply requires gun dealer training to ensure that dealers are trained on the tools they have to prevent gun trafficking and understand their obligation to engage in responsible business practices. Specifically, this bill will require firearm retailers and their employees to complete regular training created and overseen by the California Department of Justice to prevent illegal sales and enhance their business practices. This is not burdensome and it is common sense. In fact, a similar requirement just passed in New York. This legislation is critical to curbing dangerous sales, preventing guns from being diverted into the criminal market and reducing the likelihood of straw purchases, theft, burglary, and loss of inventory.

-- END --

¹¹ Bureau of Alcohol, Tobacco, Firearms, and Explosives, Safety and Security Information for Federal Firearms Licensees (June 2021), available at <https://www.atf.gov/firearms/docs/guide/safety-and-security-information-federal-firearms-licensees-atf-p-33172/download>.