

Date of Hearing: June 27, 2023  
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 241 (Min) – As Amended May 18, 2023

**As Proposed to be Amended in Committee**

**SUMMARY:** Requires the Department of Justice (DOJ) to create a firearm-sales training course and certification that firearm dealers, and their employees must complete annually. Specifically, **this bill:**

- 1) Requires the DOJ to develop and implement a training course by January 1, 2025, for firearm dealers and their employees.
- 2) Requires, commencing, July 1, 2025, that firearm dealers and their employees who regularly process the sale, loan, or transfer of a firearm or ammunition, to annually complete the DOJ's firearm-sales training course.
- 3) States that firearm dealers must maintain records of their firearm-sales course certification on their business premise and make such records available for inspection.
- 4) Provides that the firearm-sales training course must include, at minimum, training on the following subjects:
  - a) Applicable state and federal laws governing firearm and ammunition transfers;
  - b) Identifying straw purchasers and fraudulent activity;
  - c) Indicators a person is attempting to illegally purchase a firearm;
  - d) Indicators a person intends to use the firearm for unlawful purposes or self-harm;
  - e) Preventing burglaries or theft of firearms and ammunition;
  - f) Reporting requirements and how to otherwise respond to the above-mentioned circumstances;
  - g) How to teach purchasers firearm safety rules; and,
  - h) Other reasonable business practices the DOJ determines suitable to further deter the unlawful use of firearms.
- 5) States that the training course shall include an examination of no less than 20 questions to test the participant's understanding of the material, and provides answering 70% or more of

the questions correctly shall result in receiving a one-year certificate of completion.

- 6) Requires the DOJ to also prepare supplemental written materials to be made available to participants.
- 7) States that the supplemental written materials must include, at minimum, the following indicators of firearm trafficking or straw purchasing:
  - a) A purchaser buying multiple firearms;
  - b) A purchaser being accompanied by another person;
  - c) A purchaser communicating with others via phone or other means;
  - d) A purchaser being the subject of a crime gun trace;
  - e) A purchaser having purchased another firearm in the preceding 30 days;
  - f) A purchaser indicating the firearm is for another person;
  - g) How to determine the firearm is being legally purchased, including by asking the purchaser questions; and,
  - h) How to report suspected fraud.
- 8) Requires the DOJ to regularly review and update the training materials as needed.
- 9) States that local authorities are not preempted from imposing more stringent requirements regarding the training.
- 10) Authorizes the DOJ to adopt regulations to implement these provisions.

**EXISTING LAW:**

- 1) Requires a person to have a firearms dealer license before they can sell, lease, or transfer a firearm, with specified exemptions. (Pen. Code, § 26500 *et seq.*)
- 2) Provides that a firearm dealer must have a valid federal firearms license, appropriate local business licenses, and a certificate of eligibility from the DOJ, among other things. (Pen. Code, § 26700.)
- 3) 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. (Pen. Code, § 26800.)
- 4) 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. (Pen. Code, § 26840, subd. (a).)

- 5) Provides that a firearm dealer shall require every agent or employee who handles, sells or delivers firearms to obtain and provide to the dealer, 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).)
- 6) States that a firearm dealer must prohibit any agent who they know, or reasonably should know, is a person prohibited from possessing a firearm, from coming into contact with a firearm, as specified. (Pen. Code, § 26915, subd. (e).)
- 7) Prohibits anyone, including firearm dealers, from giving a firearm to a person who they have cause to believe is a person prohibited from possessing a firearm. (Pen. Code, § 27500.)
- 8) Prohibits anyone, including firearm dealers, from giving a firearm to a person who they know, or have cause to believe, is not the actual purchaser or transferee of the firearm, or who may subsequently transfer the firearm in order to circumvent firearm transfer laws. (Pen. Code, § 27515.)
- 9) Prohibits anyone from acquiring a firearm for the purpose of giving it to a person under 21 years of age or to evade conducting the transfer through a firearm dealer. (Pen. Code, § 27520.)
- 10) Requires, with exception, that any time when the licensee is not open for business, all inventory firearms must be stored in the licensed location. All firearms must be secured using one of the following methods as to each particular firearm:
  - a) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises;
  - b) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises; or,
  - c) Store the firearm in a locked fireproof safe or vault in the licensee's business premises. (Pen. Code, § 26890, subd. (a).)
- 11) Defines a "secure facility," for the purposes of firearm dealers, as a building that satisfies the certain requirements, such as having steel perimeter doorways, steel-barred windows, and other specified structural security features. (Pen. Code, § 17110.)
- 12) Requires, commencing January 1, 2024, firearm dealers to have digital video surveillance systems that record for 24 hours a day, have audio, and keep recordings for a minimum of one year, among other things. (Pen. Code, § 26806.)
- 13) States that no permit or license to purchase, own, possess, or carry, shall be required of any adult citizen unless they are prohibited from possessing a firearm. (Pen. Code, § 25605.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** 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. 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. (*“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>> [as of Jun. 16, 2023].) 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. (The Center for American Progress. *“Gun theft in the United States: A state-by-state analysis.”* (hereafter *Center for American Progress*) (Mar. 4, 2020.) <<https://www.americanprogress.org/article/gun-theft-united-states-state-state-analysis/>> [as of Jun. 16, 2023].) 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. (*“Federal Firearms Licensee Theft/Loss Report.”* Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). January 1, 2021 – December 31, 2021. <<https://www.atf.gov/resource-center/federal-firearms-licensee-theftloss-report-2021>> [as of Jun. 16, 2023]; *Center for American Progress.*)

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 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.” (*Trafficking & Straw Purchasing.* Giffords Law Center. <<https://giffords.org/lawcenter/gun-laws/policy-areas/crime-guns/trafficking-straw->

[purchasing/#:~:text=Data%20from%20a%20national%20survey,the%20yea%20preceding%20the%20survey>](#) [as of Jun. 16, 2023].)

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. (Pen. Code, § 27515.) 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. (Pen. Code, § 27520(b).) While existing law does impose certain requirements on firearm dealers, it does not require firearm dealers to take trainings that would assist them in further securing inventory or determining when a prospective purchaser may intend to break the law.

Although a great deal of guns used in crimes nationwide are stolen from private citizens (approximately 1 million out of 1.4 million crime guns successfully traced were stolen from a private citizen in 2017-2021) this bill would focus on the less frequent, but just as pernicious, thefts and straw purchases from firearm dealers. (ATF. *National Firearms Commerce and Trafficking Assessment (NFCTA): Crime Guns – Volume Two*. (Jan. 11, 2023) <<https://www.atf.gov/firearms/national-firearms-commerce-and-trafficking-assessment-nfcta-crime-guns-volume-two>> [as of Jun. 19, 2023] at Part III p. 1-2, and Part V p. 2.) This bill 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) **Preemption and Firearm Dealer Licensing Requirements:** Preemption occurs when a higher level of government removes regulatory power from a lower level of government. Under article XI, section 7 of the California Constitution, a county or city is allowed to create and enforce all local, police, sanitary, and other ordinances within its jurisdictional limits so long as it does not conflict with state laws. A conflict can occur if the local legislation if it duplicates, contradicts, or enters an area fully occupied by general law. (*Sherwin-Williams Co. v. City of Los Angeles* (hereafter *Sherwin-Williams*) (1993) 4 Cal.4th 893, 897-898.)

Relevant to this bill, preemption is where the state has expressly manifested its intent to “fully occupy” an area of law. (*Sherwin-Williams* 4 Cal.4th at 898.) This is because, in 1969, California created a statute stating that the Legislature intended,

“to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to the registration or licensing of commercially manufactured firearms...”

(Gov. Code, § 53071.)

Case law reviewing gun law preemption cases have indicated that the Legislature preempted discrete areas of gun regulation rather than the entire field of gun control. (*Great Western Shows v. County of Los Angeles* (hereafter *Great Western*) (2002) 27 Cal.4th 853, 861.)

Previous case law regarding county ordinances and firearm dealers seem to indicate when it comes to licensing, counties are preempted for the most part, depending on whether state laws already cover the topic. (*Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 911; *Suter v. City of Lafayette* (hereafter *Suter*) (1997) 57 Cal.App.4th 1109, 1124-25.) For example, a city may have the ability to confine firearm dealers to certain commercially zoned areas, but may not regulate firearm storage requirements already covered by state law. (*Great Western, supra*, 27 Cal.4th at 863 [citing *Suter, supra*, 57 Cal.App.4th at 1118-1119].)

This bill would require the DOJ to create a training and certification framework for firearm dealers, and would also allow local authorities to make more stringent requirements regarding the training. By allowing local authorities to make more stringent requirements, this bill would create an exception from preemption language in Government Code Section 53071.

One important question is whether allowing local authorities to come up with an additional licensing training course is a prudent choice. First, would the course created by the DOJ not be enough to properly train firearm dealers? Furthermore, would this allow for a local authority to require too stringent of a course that ultimately drives out firearm dealers in their jurisdiction? Similar tactics have been used before and led to case law unfavorable to gun control measures. (*Teixeira v. City of Alameda* (2017) 873 F.3d 670.)

- 4) **Argument in Support:** According to the bill's sponsor, *Brady United Against Gun Violence*, "Gun dealers play the critical role of gatekeepers, including using the Brady Background Check System to confirm the eligibility of potential gun purchasers, and their conduct has a direct bearing on whether guns are diverted to illegal markets through straw sales or theft, or are made available to individuals who would harm themselves or others. Almost all guns enter circulation through the legal market: built by licensed manufacturers and sold by gun dealers. Illegal guns begin as legal firearms, initially sold by dealers and subsequently funneled into an illegal market, often through straw purchases where a person buys a firearm on behalf of another while falsely representing that it is for themselves. Straw purchases, which undermine the background check system, make it more difficult for law enforcement to trace illegal guns, or guns or bullet casings found at crime scenes. Straw purchases are the most frequent type of trafficking channel identified in investigations carried out by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Shockingly, ATF inspection reports show that dealers that allow straw purchases are allowed to stay in business more often than not.

"Legal firearms also enter the illegal market through thefts from gun dealer premises that are not adequately secured. According to recent data from ATF, approximately 16,900 firearms are reported lost or stolen from gun dealers each year – with many of these firearms later traced to violent crime. Gun theft is on the rise across the country because stolen guns are easy for criminals to sell. As the chief of the ATF's Intelligence Unit noted: '[g]uns are the hottest commodity out there, except for . . . cold, hard cash.' The threat of stolen guns to public safety is substantial. Most stolen guns are recovered in connection with crime in cities near the location from where they were stolen. ATF expressed concerns about persistent theft from licensed dealers in 2018, calling it one of the agency's primary 'external challenges.' Without action to require dealers to implement safe business practices, this trend will continue.

“Despite these 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. For example, there are no federal laws or regulations that require gun dealers to train their employees on recognizing signs of illegal activity..

“While most Americans have been touched by gun violence in some way, communities of color are disproportionately impacted by this epidemic. Negligent, irresponsible, and illegal conduct by gun dealers has immense consequences, especially for communities of color that bear the heaviest burden of gun violence. Every year, hundreds of thousands of guns used in crime are recovered and traced by law enforcement. Tens of thousands of guns are also trafficked across state lines, often from states with weak laws to states with much stronger laws. These guns do not just appear on America’s streets. Appropriate conduct by gun dealers and their employees is critical to keeping guns out of impacted communities. According to CDC data, 89 percent of gun homicides take place in urban settings, and 78 percent of gun homicide victims are Black or Hispanic.

“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 passed last year 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.”

- 5) **Argument in Opposition:** According to the *California Rifle & Pistol Association*, “The author is quoted as stating in a January 25, 2023, press release, ‘We have got to do something to reduce the gun violence in this country. While this bill will not end gun violence, it will help to reduce it, by requiring gun dealers to undergo training to prevent theft, fraud, and illegal purchases.’ This bill as stated will have no demonstrable impact on gun violence as numerous national studies have shown that criminals do not follow the law, and do not purchase firearms legally.

“Federal Firearms License dealers already take extensive training through the National Shooting Sports Foundation (NSSF) which provides annual Firearm Industry Compliance education at SHOT Show and online (<https://www.nssf.org/articles/2022-firearm-industry-compliance-education/>). NSSF also provides straw purchase avoidance training such as ‘Strawman: The Customer You Do Not Want – Tactics to Help FFLs Avoid Straw Purchase Sales’ which is written by industry experts and former ATF agents. The fact that this is the status quo, demonstrates that the purported significance of this proposed legislation is limited at best.

“The Department of Justice (CADOJ) has repeatedly fallen short of legislative expectations

in implementing laws passed by the legislature over several years. The lack of a stakeholder group providing real-world experience to training designed to protect all Californians is demonstrable. of a bill that is not well thought out. CADOJ has numerous current projects they seem to be unable to meet general performance standards to keep Californians safe.

“CRPA will continue to support sound legislation to reduce crime and get criminals off our streets and out of our communities. Our motto for 150 years has been ‘Be Safe’ and we will support sound legislation that does so. Making a law to advise FFLs to do what they are already doing does not keep firearms out of the hands of criminals and therefore SB 241 will not deliver on that promise. For the foregoing reasons, the California Rifle & Pistol Association strongly opposes SB 241.”

- 6) **Prior Legislation:** SB 1384 (Min), Chapter 995, Statutes of 2022, among other things, contained provisions substantially similar to this bill. Those provisions were removed in the Assembly Appropriations Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Brady California (Sponsor)  
Brady United Against Gun Violence  
City of Alameda  
City of Alhambra  
City of Monterey Park  
County of Los Angeles Board of Supervisors  
Everytown for Gun Safety Action Fund  
Initiate Justice (UNREG)  
Los Angeles County  
Los Angeles County District Attorney's Office  
Prosecutors Alliance California  
Women for American Values and Ethics Action Fund

### **Opposition**

California Rifle and Pistol Association, INC.  
Gun Owners of California, INC.

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