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CITY OF OAKLAND



Councilmembers Desley Brooks, and Rebecca Kaplan

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: Rules & Legislation Committee

From: Councilmembers Desley Brooks, and Rebecca Kaplan

Date: March 24, 2016

Subject: Resolution of Support for AB 2459: Transparency For All Gun Transactions

Colleagues on the City Council and Members of the Public,

With our Resolution of Support for AB 2459 (McCarty), we are submitting the attached Fact Sheet, and text of the bill.

Respectfully submitted,

Desley Brooks, Councilmember

Rebecca Kaplan, Councilmember

Fact Sheet

AB 2459 (McCarty): Transparent Gun Sales

SUMMARY:

This bill would provide transparency for all gun transactions by enacting requirements which are considered best practices by many cities and gun retailers across California.

BACKGROUND:

A New York Times article “How They Got Their Guns” brought to light the fact that since 2009, 15 mass shootings were committed with legally purchased firearms. This discredits that the notion that only illegal firearms are used in the commission of these heinous acts.

A study by the Bureau of Alcohol, Tobacco and Firearms, found that 60% of legally purchased weapons found at crime scenes came from 1% of gun dealers. Later studies have estimated that 90% of legally purchased guns used in the commission of a crime were from 5% of gun dealers. In 2014, 2,935 Californians were killed by firearms.

Many of these gun sales were so called “straw sales” whereby a person prohibited from purchasing a gun uses a third party, often a family member or friend, to legally purchase the gun. These sales are legal on paper, but when recorded becomes obvious that the purchaser has no interest in purchasing the gun for themselves. Video recording is a common practice in all types of retail and provides safety and security for both store employees and customers.

Another source of legally purchased guns are residential dealers, these are licensed dealers who sell weapons out of their homes.

To date, 59 cities and counties in California have banned this practice, recognizing the potential for abuse and lack of adequate oversight.

SOLUTION:

This bill would:

- Require all gun retailers to install and use video recording equipment.
- Statewide ban of residential gun dealers.
- Require all gun retailers to hold insurance.
- Grant authority to the Attorney General to enforce.
- Allow local jurisdictions to enact more stringent laws if they so choose.

SPONSOR:

Brady Campaign (Co-Sponsor)
Law Center to Prevent Gun Violence (Co-Sponsor)

STATUS:

Introduced

CONTACT:

Alex Harold
Office of Assemblymember Kevin McCarty
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ASSEMBLY BILL

No. 2459

Introduced by Assembly Member McCarty

February 19, 2016

An act to amend Sections 26800 and 26805 of, and to add Sections 26920 and 26925 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2459, as introduced, McCarty. Firearms dealers: conduct of business.

Under existing law, a firearms dealer or licensee means a person who has a valid federal firearms license, has a regulatory or business license, has a valid seller's permit issued by the State Board of Equalization, has a certificate of eligibility issued by the Department of Justice, has a license granted by a duly constituted licensing authority of any city, county, or city and county, and is among those recorded in the centralized list of licensed firearms dealers kept by the Department of Justice. Existing law regulates licensed firearms dealers and provides that a license is subject to forfeiture for a breach of specified prohibitions in existing law.

This bill would authorize the Department of Justice to impose a civil fine not exceeding \$500 for a breach of those prohibitions, and a civil fine not exceeding \$2,000 for a breach of those prohibitions when the licensee has received written notification from the department regarding the breach and fails to take corrective action, as specified, or the department determines the licensee committed the breach knowingly or with gross negligence.

Existing law, subject to exceptions pertaining to specified gun shows or events, requires a firearms dealer to conduct business only in the buildings designated in the dealer's license.

This bill would, in addition, commencing January 1, 2018, prohibit a firearms dealer license from designating a building that is a residence, as defined, as a building where the licensee's business may be conducted. The bill would also provide that these provisions would not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding where the business of the licensee may be conducted.

The bill would require a licensee to ensure that its business premises are monitored by a video surveillance system that, among other requirements, visually records and archives footage of (1) every sale or transfer of a firearm or ammunition, in a manner that makes the facial features of the purchaser or transferee clearly visible in the recorded footage; (2) all places where firearms or ammunition are stored, displayed, carried, handled, sold, or transferred; (3) the immediate exterior surroundings of the licensee's business premises; and (4) all parking areas owned or leased by the licensee.

The bill would, commencing January 1, 2018, require a licensee to obtain a policy of commercial insurance that insures the licensee against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business and business premises, in the amount of \$1,000,000 per incident, as specified. The bill would also provide that these provisions would not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding insurance pertaining to the licensee's business.

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

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

- 1 SECTION 1. Section 26800 of the Penal Code is amended to
- 2 read:
- 3 26800. (a) A license under this chapter is subject to forfeiture
- 4 for a breach of any of the prohibitions and requirements of this
- 5 article, except those stated in the following provisions:
- 6 (a)

1 (1) Subdivision (c) of Section 26890.

2 ~~(b)~~

3 (2) Subdivision (d) of Section 26890.

4 ~~(e)~~

5 (3) Subdivision (b) of Section 26900.

6 (b) *The department may assess a civil fine against a licensee,*
7 *not to exceed five hundred dollars (\$500), for any breach of a*
8 *prohibition or requirement of this article that subjects the license*
9 *to forfeiture under subdivision (a). The department may assess a*
10 *civil fine not to exceed two thousand dollars (\$2,000), for any*
11 *breach of a prohibition or requirement of this article that subjects*
12 *the license to forfeiture under subdivision (a), for either of the*
13 *following:*

14 (1) *The licensee has received written notification from the*
15 *department regarding the breach and subsequently failed to take*
16 *corrective action in a timely manner.*

17 (2) *The licensee is otherwise determined by the department to*
18 *have knowingly or with gross negligence breached the prohibition*
19 *or requirement.*

20 SEC. 2. Section 26805 of the Penal Code is amended to read:

21 26805. (a) (1) Except as provided in subdivisions (b) and (c),
22 the business of a licensee shall be conducted only in the buildings
23 designated in the license.

24 (2) *Commencing January 1, 2018, a license shall not designate*
25 *any building that is a residence as a building where the licensee's*
26 *business may be conducted. For purposes of this section,*
27 *"residence" means any structure intended or used for human*
28 *habitation, including, but not limited to, dwellings, condominiums,*
29 *apartments, rooms, motels, hotels, time-shares, and recreational*
30 *or other vehicles in which human habitation occurs.*

31 (b) (1) A person licensed pursuant to Sections 26700 and 26705
32 may take possession of firearms and commence preparation of
33 registers for the sale, delivery, or transfer of firearms at any gun
34 show or event, as defined in Section 478.100 of Title 27 of the
35 Code of Federal Regulations, or its successor, if the gun show or
36 event is not conducted from any motorized or towed vehicle. A
37 person conducting business pursuant to this subdivision shall be
38 entitled to conduct business as authorized herein at any gun show
39 or event in the state, without regard to the jurisdiction within this
40 state that issued the license pursuant to Sections 26700 and 26705,

1 provided the person complies with all applicable laws, including,
2 but not limited to, the waiting period specified in subdivision (a)
3 of Section 26815, and all applicable local laws, regulations, and
4 fees, if any.

5 (2) A person conducting business pursuant to this subdivision
6 shall publicly display the person's license issued pursuant to
7 Sections 26700 and 26705, or a facsimile thereof, at any gun show
8 or event, as specified in this subdivision.

9 (c) (1) A person licensed pursuant to Sections 26700 and 26705
10 may engage in the sale and transfer of firearms other than
11 handguns, at events specified in Sections 26955, 27655, 27900,
12 and 27905, subject to the prohibitions and restrictions contained
13 in those sections.

14 (2) A person licensed pursuant to Sections 26700 and 26705
15 may also accept delivery of firearms other than handguns, outside
16 the building designated in the license, provided the firearm is being
17 donated for the purpose of sale or transfer at an auction or similar
18 event specified in Section 27900.

19 (d) The firearm may be delivered to the purchaser, transferee,
20 or person being loaned the firearm at one of the following places:

21 (1) The building designated in the license.

22 (2) The places specified in subdivision (b) or (c).

23 (3) The place of residence of, the fixed place of business of, or
24 on private property owned or lawfully possessed by, the purchaser,
25 transferee, or person being loaned the firearm.

26 (e) *This section does not preclude or preempt a local ordinance*
27 *that places additional or more stringent requirements on firearms*
28 *dealers regarding where the business of the licensee may be*
29 *conducted.*

30 SEC. 3. Section 26920 is added to the Penal Code, to read:

31 26920. (a) A licensee shall ensure that its business premises
32 are monitored by a video surveillance system that meets the
33 requirements of this section.

34 (b) The video surveillance system shall visually record and
35 archive footage of all of the following:

36 (1) Every sale or transfer of a firearm or ammunition, in a
37 manner that makes the facial features of the purchaser or transferee
38 clearly visible in the recorded footage.

39 (2) All places where firearms or ammunition are stored,
40 displayed, carried, handled, sold, or transferred, including, but not

1 limited to, counters, safes, vaults, cabinets, shelves, cases, and
2 entryways.

3 (3) The immediate exterior surroundings of the licensee's
4 business.

5 (4) All parking areas owned or leased by the licensee.

6 (c) The video surveillance system shall operate and record
7 continuously, without interruption, whenever the licensee is open
8 for business. Whenever the licensee is not open for business, the
9 system shall be triggered by a motion detector and begin recording
10 immediately upon detection of any motion within the monitored
11 area.

12 (d) When recording, the video surveillance system shall store
13 color images of the monitored area at a frequency sufficient to
14 produce retrievable and identifiable images and video recordings
15 that are capable of delineating on playback the activity and physical
16 features of persons or areas where firearms and ammunition are
17 stored, displayed, carried, handled, sold, or transferred.

18 (e) The stored images shall be maintained on the business
19 premises of the licensee for a period of not less than five years
20 from the date of recordation. If, within five years of the transfer,
21 a firearm or ammunition acquired in the transaction is the subject
22 of a law enforcement investigation or firearms disposition request,
23 the footage of the transfer shall be preserved for an additional five
24 years.

25 (f) The video surveillance system shall be maintained in proper
26 working order at all times. If the system becomes inoperable, it
27 shall be repaired or replaced within 15 calendar days. The licensee
28 shall inspect the system at least weekly to ensure that it is
29 operational and images are being recorded and retained as required.

30 (g) The licensee shall post a sign in a conspicuous place at each
31 entrance to the premises that states in block letters not less than
32 one inch in height:

33
34 "THESE PREMISES ARE UNDER VIDEO SURVEILLANCE.
35 YOUR IMAGE MAY BE RECORDED."
36

37 (h) A licensee shall, on an annual basis, provide certification to
38 the Department of Justice, in a manner prescribed by the
39 department, that its video surveillance system is in proper working
40 order.

1 SEC. 4. Section 26925 is added to the Penal Code, to read:

2 26925. (a) Commencing January 1, 2018, a licensee shall
3 obtain a policy of commercial insurance that insures the licensee
4 against liability for damage to property and for injury to or death
5 of any person as a result of the theft, sale, lease or transfer or
6 offering for sale, lease or transfer of a firearm or ammunition, or
7 any other operations of the business and business premises. The
8 limits of liability shall not be less than one million dollars
9 (\$1,000,000) for each incident of damage to property or incident
10 of injury or death to a person.

11 (b) A licensee shall, on an annual basis, provide certification to
12 the Department of Justice that it has obtained a policy of
13 commercial insurance that meets the requirements of this section.

14 (c) The policy of commercial insurance shall contain an
15 endorsement providing that the policy shall not be canceled until
16 written notice has been given to the Department of Justice at least
17 30 days prior to the time the cancellation becomes effective.

18 (d) This section does not preclude or preempt a local ordinance
19 that places additional or more stringent requirements on firearms
20 dealers regarding insurance requirements relating to the conduct
21 of the business of the licensee.

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Approved as to Form and Legality

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City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS DESLEY BROOKS, AND REBECCA KAPLAN

RESOLUTION IN SUPPORT OF AB 2459 (MCCARTY) THAT WOULD ENACT REQUIREMENTS FOR ALL GUN TRANSACTIONS SUCH AS REQUIRING GUN RETAILERS TO INSTALL AND USE VIDEO RECORDING EQUIPMENT, BAN OF RESIDENTIAL GUN DEALERS, REQUIRE GUN RETAILERS TO HOLD INSURANCE, GRANT AUTHORITY TO ATTORNEY GENERAL TO ENFORCE, AND ALLOW LOCAL JURISDICTIONS TO ENACT MORE STRINGENT LAWS IF THEY SO CHOOSE.

WHEREAS, According to the Bureau of Alcohol, Tobacco and Firearms, 90% of legally purchased guns used in the commission of a crime were from 5% of gun dealers; and

WHEREAS, Many of these gun sales were "straw sales" a person prohibited from purchasing a gun uses a third party to legally purchase a gun who has no interest in using it for themselves; and

WHEREAS, To date, 59 cities and counties in California have banned the practice of residential gun dealers who are licensed dealers who sell weapons out of their homes; and

WHEREAS, The City of Oakland has reported 2,422 crimes involving firearms in 2015; and

WHEREAS, Assembly Bill (AB) 2459 (McCarty) would provide transparency for all gun transactions by enacting requirements such as requiring gun retailers to install and use video recording equipment to visually record and archive transactions and storage areas, require all gun retailers to hold insurance, and require a statewide ban of residential gun dealers; and

WHEREAS, AB 2459 allows local jurisdictions to enact additional or more stringent laws if they so choose; and

WHEREAS, AB 2459 is endorsed by the Brady Campaign to Prevent Gun Violence and the Law Center to Prevent Gun violence, and other groups; and now, therefore, be it

RESOLVED: That the Oakland City Council hereby endorses AB 2459 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

