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LUIS A. ALEJO  
ASSEMBLYMEMBER, THIRTIETH DISTRICT

**Assembly Bill 1609: Enforcement of Interstate  
Gun Trafficking Laws**

**Summary**

AB 1609 brings state law in line with federal law by authorizing state and local law enforcement agencies to prosecute individuals who bring firearms into the state illegally. Specifically, the bill clarifies that it is a state law violation for a resident of California to bring a gun into the state without going through a licensed dealer.

**The Problem**

Every day, people go to Nevada or Arizona, purchase guns, bring them back into California, and sell them to criminals on the streets. According to data provided on the Bureau of Alcohol, Tobacco, Firearms and Explosives website, approximately 59 - 65% of guns seized in California are either untraceable (i.e. not registered in the state) or registered outside the state. These guns were brought into the state illegally, and were used either in a crime or found during a criminal investigation. AB 1609 seeks to keep guns out of the hands of criminals.

**Background**

Anyone who complies with the federal "direct ship" mandate, the new residence procedures, or the collector procedures is fully protected by this bill. The people who are not protected are the criminal element.

AB 1609 reflects a number of concerns that have been raised regarding the State's ability under current state code to regulate the activities of California residents going outside of California, acquiring ownership of firearms, and then physically bringing them back into the state. It is agreed that this importation conduct violates current federal law, but there are ambiguities as to the state's jurisdictional authority.

Federal law in essence mandates "direct ship," which means that guns can be acquired outside of the state, but, to be possessed and received in-state, the transaction has to be brokered through a federal firearms licensee (who in California also has to be state licensed) for pickup in accordance with California law. That includes background checks, the waiting period, registration, possession of a handgun safety certificate, among other requirements. Currently, it is unclear if this also violates state law. AB 1609 clarifies that it does.

The California Department of Justice conducts investigations to prevent illegal gun trafficking at in-state and out-of-state gun shows in accordance with state and federal law. According to the

Nevada County District Attorney's Office, prosecutions are being made for prohibited weapons and prohibited persons – but, no prosecutions are being made for the illegal acquisition of “normal guns.” This bill will give the Attorney General the tools to investigate and the district attorneys the tools to prosecute this gun trafficking behavior as it relates to “normal guns” that are acquired illegally.

**Support**

California Chapters of the Brady Campaign  
Taxpayers for Improving Public Safety  
Law Center to Prevent Gun Violence

Date of Hearing: March 25, 2014  
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Tom Ammiano, Chair

AB 1609 (Alejo) – As Introduced: February 6, 2014

SUMMARY: Clarifies the regulations for direct shipment requirements for transfer of ownership of firearms. Specifically, this bill:

- 1) Would require a California resident who seeks to own and possess within the state a firearm acquired from outside the state to have the firearm delivered to a dealer in this state for delivery pursuant to specified requirements and exceptions to those requirements. The specified requirements include:
  - a) a 10-day waiting period;
  - b) a purchaser background check; and
  - c) possession of a handgun safety certificate by the purchaser.
- 2) Would make a violation of these provisions involving a firearm that is not a handgun a misdemeanor, and a violation involving a handgun a misdemeanor or a felony.

EXISTING FEDERAL LAW:

- 1) States that under federal law, it shall be unlawful for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph: (18 U.S.C. 922(a)(3).)
  - a) Shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State;
  - b) Shall not apply to the transportation or receipt of a firearm obtained in conformity as specified; and
  - c) Shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter (effective Dec. 16, 1968);
- 2) States that under federal law, it shall be unlawful for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed

manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to: (18 U.S.C. 922(a)(5).)

- a) The transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence; and
  - b) The loan or rental of a firearm to any person for temporary use for lawful sporting purposes.
- 3) States that under federal law it shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance. (18 U.S.C. 922(b)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement: According to the author, "I support the 2<sup>nd</sup> Amendment, but I have seen too many families torn apart by criminal behavior involving firearms. I am not going to sit by idly and wait for more. The safety of our children and families has to be top priority, and I am willing to fight for their protection.

"Every day, guns are being purchased across state lines in Nevada and Arizona, trafficked into California, and sold to criminals on our streets. I represent the City of Salinas, which has one of the highest rates of gun violence amongst youths in the nation. These youths are getting guns through illegal transactions from out of state purchasers. I am confident that this bill will cut down on the number of guns on the streets of our most vulnerable cities by giving state law enforcement the tools to enforce what in many cases is now federal law. This bill will not affect those who abide by the law, only those who break it."

- 2) Background: According to the background submitted by the author, "A number of concerns have been raised as to the State's ability under current state code to regulate the activities of California residents going outside of California, acquiring ownership of a firearm, and then physically bringing that firearm back into the state.

"It is agreed that this importation conduct violates current federal law, but there are ambiguities as to the state's jurisdictional authority. Federal law in essence mandates "direct ship," which means that guns can be acquired outside of the state, but, to be possessed and received in-state, the transaction has to be brokered through a federal firearms licensee [who in California also has to be state licensed] for pickup in accordance with California law. That includes background checks, the waiting period, registration, etc. This mandate, stemming

from 18 U.S.C. 922(a)(3), (a)(5), and (b)(2), creates certain procedures for bringing firearms across state lines and makes certain firearm transactions illegal.

"AB 1609 brings state law in line with federal law by authorizing the California Attorney General to prosecute individuals who bring firearms into the state illegally. Specifically, the bill clarifies that it is a state law violation for a resident of California to bring a gun into the state without going through a licensed dealer.

"According to data provided on the Bureau of Alcohol, Tobacco, Firearms and Explosives website, approximately 59 - 65% of guns seized in California are either untraceable (i.e. not registered in the state) or registered outside the state. These guns were brought into the state illegally, and were used either in a crime or found during a criminal investigation. AB 1609 seeks to deter individuals from breaking the law and to keep guns out of the hands of criminals.

"Anyone who complies with the federal "direct ship" mandate, the new residence procedures, or the collector procedures is fully protected by this bill. The people who are not protected are the criminal element.

"In addition, it is important to note that in the governor's proposed budget, the Department of Justice is set to receive nearly \$3.5 million to conduct investigations to prevent illegal gun trafficking at in-state and out-of-state gun shows in accordance with state and federal law. This bill will give the Attorney General the tools to prosecute this illegal gun trafficking behavior."

- 3) Attorney General Opinion 10-504: In 2010, then Attorney General Brown was asked by District Attorney Bob Lee of Santa Cruz County whether in a private party transaction whether the transferee and the transferor each commit the crime if they do not comply with the provisions of "through dealer processing" or an exemption thereto. In October of 2013 after a review of the law in this area, Attorney General Harris opined that it was indeed a violation as to both. The opinion was careful not to opine if the violation was a "continuing offense."
- 4) Prohibited Persons: By requiring direct shipments of firearms from out of state, this bill will assist in keeping firearms out of the hands of prohibited persons. California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while specified misdemeanors will result in a 10-year prohibition. A person may be prohibited due to a protective order or as a condition of probation. Another prohibition is based on the mental health of the individual. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is

likely to use firearms or other deadly weapons in a safe and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

DOJ developed the Prohibited Armed Persons File, which is commonly referred to as the Armed Prohibited Persons System (APPS), an automated system for tracking handgun and assault weapon owners in California who may pose a threat to public safety. (Pen. Code, § 30000 et seq.) APPS collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. DOJ receives automatic notifications from state and federal criminal history systems to determine if there is a match in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement also may request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons. (Pen. Code, § 30010.)

- 5) Argument in Support: According to the Law Center to Prevent Gun Violence, "One of the critical ways that guns enter the illegal market is through trafficking. Trafficking schemes frequently employ 'straw purchasers' – individuals who are able to pass background checks – to buy weapons then illegally deliver them to individuals who are prohibited from possessing firearms. Because California has the nation's strongest gun laws, guns are frequently trafficked into the state by straw purchasers from states with far weaker laws. According to data from the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, a significant number of crime guns recovered in our state every year were purchased in other states, including Arizona, Nevada, Texas, and others with extremely weak laws.

"Currently, federal law makes it illegal to purchase a handgun outside of California and bring it into the state unless the firearm is shipped to a licensed dealer in California to complete the transaction. Federal law also requires that any dealer outside of California selling a long gun to a California resident who has traveled to another state to purchase a long gun comply with all California laws in completing the transaction. Because non-California dealers cannot comply with California's separate background check requirement administered by the California Department of Justice, this effectively means that California residents are barred by federal law from purchasing long guns outside of California, as well as handguns.

"However, federal authorities do not have the resources to enforce existing laws and California has no state law governing these transactions at all. AB 1609 would fix this problem by explicitly requiring that any guns purchased out of state be shipped to a licensed California dealer in order to complete the transaction. This would give California law enforcement the tools to ensure that California laws are followed with respect to every gun purchased by state residents, including those requiring background checks, compliance with the firearm safety certificate requirement, and compliance with the 10-day waiting period."

- 6) Argument in Opposition: According to the California Rifle and Pistol Association, "AB 1609 will add to prison over-crowding and will increase state and local costs. AB 1609 is an unnecessary bill. There are adequate California laws that prohibit the transfer of firearms

without going through a licensed firearms dealer."

- 7) Related Legislation: AB 740 (Alejo), clarified the definition of infrequent transactions as they apply to all firearms transactions, specify the regulations for direct shipment sales of firearms, and required electronic notification to the Department of Justice for specified conditions by state courts. Contained the provisions of this bill in a larger body of statutory changes. AB 740 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapters of the Brady Campaign to Prevent Gun Violence  
Law Center to Prevent Gun Violence  
Taxpayers for Improving Public Safety

Opposition

California Rifle and Pistol Association  
National Rifle Association

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

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# OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER KALB

**RESOLUTION IN SUPPORT OF STATE ASSEMBLY BILL (AB) 1609 (ALEJO) THAT WOULD REQUIRE THAT ANY CALIFORNIA RESIDENT WHO INTENDS TO OWN OR POSSESS A FIREARM IN THE STATE THAT IS ACQUIRED FROM OUT OF THE STATE HAVE THE FIREARM DELIVERED TO A LICENSED DEALER BEFORE TRANSFERRING POSSESSION, SUBJECT TO EXISTING WAITING PERIOD, BACKGROUND CHECK, AND HANDGUN SAFETY REQUIREMENTS IN LAW**

**WHEREAS**, concerns exist regarding the State's ability under current state code to regulate the activities of California residents going outside of California, acquiring ownership of firearms, and then physically bringing them back into the state; and

**WHEREAS**, data provided on the Bureau of Alcohol, Tobacco, Firearms and Explosives website indicate that approximately 59 - 65% of guns seized in California are either untraceable (i.e. not registered in the state) or registered outside the state, with all of such seized guns having been either used in a crime or found during a criminal investigation; and

**WHEREAS**, Assembly Bill 1609, introduced by Assemblymember Luis Alejo on February 6, 2014, would clarify that California law regulates the transportation of firearms into the state, requiring that firearms purchased out-of-state go through an in-state dealer, as is currently required for firearms purchased in the state, thereby applying existing background checks, the waiting period, registration, possession of a handgun safety certificate, and other requirements currently applicable to in-state sales to all firearms brought into California; now, therefore be it

**RESOLVED** That the Oakland City Council hereby endorses Assembly Bill (AB) 1609; and be it

**FURTHER RESOLVED:** That a copy of this resolution shall be transmitted to Assembly Members Luis Alejo, Rob Bonta, Nancy Skinner, and Toni Atkins, Senators Loni Hancock and Kevin de Leon, and Governor Jerry Brown.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE.

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF AND PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS

City Clerk and Clerk of the Council of the City of  
Oakland, California