

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN SENATE MAY 15, 2013

AMENDED IN SENATE APRIL 3, 2013

SENATE BILL

No. 396

**Introduced by Senators Hancock and Steinberg
(Coauthor: Senator Jackson)**

February 20, 2013

An act to amend Sections 16350, 16740, 32310, 32400, 32405, 32435, and 32450 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as amended, Hancock. Firearms: magazine capacity.

(1) Existing law, for purposes pertaining to the ammunition capacity of certain assault weapons, defines "capacity to accept more than 10 rounds" to mean capable of accommodating more than 10 rounds, but specifies that this term does not apply to a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

This bill would revise that definition to mean capable of holding more than 10 rounds, but not applying to a feeding device that has been permanently altered so that it cannot hold more than 10 rounds.

(2) Existing law prohibits the sale, gift, and loan of a large-capacity magazine. Existing law defines "large-capacity magazine" to mean any ammunition feeding device with the capacity to accept more than 10 rounds, but provides that the definition may not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

This bill would include within that definition of large-capacity magazine a feeding device that had a capacity of more than 10 rounds but has been permanently modified to hold no more than 10 rounds of ammunition, and would exclude from that definition a magazine that is only of sufficient length to hold no more than 10 rounds of ammunition.

This bill, commencing July 1, 2014, would make it an infraction punishable by a fine not to exceed \$100, or a misdemeanor punishable by a fine not to exceed \$100, by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment, for any person to possess any large-capacity magazine, regardless of the date the magazine was acquired. The bill would authorize various methods by which a person in lawful possession of a large-capacity magazine may dispose of the magazine prior to the July 1, 2014, prohibition on possession.

(3) Existing law creates various exceptions to that crime, which include, but are not limited to, the sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by the holder of a special weapons permit for use as a prop for a motion picture, or any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

This bill would make conforming changes by adding possession to those provisions.

This bill would incorporate additional changes to Section 32310 of the Penal Code proposed by AB 48 that would become operative if this bill and AB 48 are both enacted and this bill is enacted last.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

SECTION 1. Section 16350 of the Penal Code is amended to read:

16350. As used in Section 30515, “capacity to accept more than 10 rounds” means capable of holding more than 10 rounds. The term does not apply to a feeding device that has been permanently altered so that it cannot hold more than 10 rounds.

SEC. 2. Section 16740 of the Penal Code is amended to read:

16740. (a) As used in this part, “large-capacity magazine” means any ammunition feeding device with the capacity to accept more than 10 rounds. As used in this part, “large-capacity magazine” also includes a feeding device that had a capacity of more than 10 rounds but has been permanently modified to hold no more than 10 rounds of ammunition.

(b) As used in this part, “large-capacity magazine” does not include any of the following:

(1) A magazine that is only of sufficient length to hold no more than 10 rounds of ammunition.

(2) A .22 caliber tube ammunition feeding device.

(3) A tubular magazine that is contained in a lever-action firearm.

~~SEC. 3. Section 32310 of the Penal Code is amended to read:~~

~~32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, or, commencing July 1, 2014, possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100), or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100), by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.~~

~~(b) Any person who, prior to July 1, 2014, legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means:~~

~~(1) Remove the large-capacity magazine from the state.~~

~~(2) Prior to July 1, 2014, sell the large-capacity magazine to a licensed firearms dealer.~~

~~(3) Destroy the large-capacity magazine.~~

~~(4) Surrender the large-capacity magazine to a law enforcement agency for destruction.~~

~~SEC. 3.5. Section 32310 of the Penal Code is amended to read:~~

~~32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, receives, or, commencing July 1, 2014, possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100), or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100), by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.~~

~~(b) Any person who, prior to July 1, 2014, legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means:~~

~~(1) Remove the large-capacity magazine from the state.~~

~~(2) Prior to July 1, 2014, sell the large-capacity magazine to a licensed firearms dealer.~~

~~(3) Destroy the large-capacity magazine.~~

~~(4) Surrender the large-capacity magazine to a law enforcement agency for destruction.~~

~~(c) For purposes of this section, “manufacturing” includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.~~

~~SEC. 3. Section 32310 of the Penal Code is amended to read:~~

~~32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine is punishable by imprisonment in a county jail not~~

1 exceeding one year or imprisonment pursuant to subdivision (h)
2 of Section 1170.

3 *(b) Except as provided in Article 2 (commencing with Section*
4 *32400) of this chapter and in Chapter 1 (commencing with Section*
5 *17700) of Division 2 of Title 2, commencing July 1, 2014, any*
6 *person in this state who possesses any large-capacity magazine,*
7 *regardless of the date the magazine was acquired, is guilty of an*
8 *infraction punishable by a fine not to exceed one hundred dollars*
9 *(\$100), or is guilty of a misdemeanor punishable by a fine not to*
10 *exceed one hundred dollars (\$100), by imprisonment in a county*
11 *jail not to exceed one year, or by both that fine and imprisonment.*

12 *(c) Any person who, prior to July 1, 2014, legally possesses a*
13 *large-capacity magazine shall dispose of that magazine by any of*
14 *the following means:*

15 *(1) Remove the large-capacity magazine from the state.*

16 *(2) Prior to July 1, 2014, sell the large-capacity magazine to a*
17 *licensed firearms dealer.*

18 *(3) Destroy the large-capacity magazine.*

19 *(4) Surrender the large-capacity magazine to a law enforcement*
20 *agency for destruction.*

21 *SEC. 3.5. Section 32310 of the Penal Code is amended to read:*

22 *32310. (a) Except as provided in Article 2 (commencing with*
23 *Section 32400) of this chapter and in Chapter 1 (commencing with*
24 *Section 17700) of Division 2 of Title 2, ~~commencing January 1,~~*
25 *2000, any person in this state who manufactures or causes to be*
26 *manufactured, imports into the state, keeps for sale, or offers or*
27 *exposes for sale, or who gives, ~~or~~ lends, buys, or receives any*
28 *large-capacity magazine is punishable by imprisonment in a county*
29 *jail not exceeding one year or imprisonment pursuant to subdivision*
30 *(h) of Section 1170.*

31 *(b) Except as provided in Article 2 (commencing with Section*
32 *32400) of this chapter and in Chapter 1 (commencing with Section*
33 *17700) of Division 2 of Title 2, commencing July 1, 2014, any*
34 *person in this state who possesses any large-capacity magazine,*
35 *regardless of the date the magazine was acquired, is guilty of an*
36 *infraction punishable by a fine not to exceed one hundred dollars*
37 *(\$100), or is guilty of a misdemeanor punishable by a fine not to*
38 *exceed one hundred dollars (\$100), by imprisonment in a county*
39 *jail not to exceed one year, or by both that fine and imprisonment.*

1 (c) Any person who, prior to July 1, 2014, legally possesses a
2 large-capacity magazine shall dispose of that magazine by any of
3 the following means:

4 (1) Remove the large-capacity magazine from the state.

5 (2) Prior to July 1, 2014, sell the large-capacity magazine to a
6 licensed firearms dealer.

7 (3) Destroy the large-capacity magazine.

8 (4) Surrender the large-capacity magazine to a law enforcement
9 agency for destruction.

10 (d) For purposes of this section, “manufacturing” includes both
11 fabricating a magazine and assembling a magazine from a
12 combination of parts, including, but not limited to, the body, spring,
13 follower, and floor plate or end plate, to be a fully functioning
14 large-capacity magazine.

15 SEC. 4. Section 32400 of the Penal Code is amended to read:

16 32400. Section 32310 does not apply to the sale of, giving of,
17 lending of, possession of, importation into this state of, or purchase
18 of, any large-capacity magazine to or by any federal, state, county,
19 city and county, or city agency that is charged with the enforcement
20 of any law, for use by agency employees in the discharge of their
21 official duties, whether on or off duty, and where the use is
22 authorized by the agency and is within the course and scope of
23 their duties.

24 SEC. 5. Section 32405 of the Penal Code is amended to read:

25 32405. Section 32310 does not apply to the sale to, lending to,
26 transfer to, purchase by, receipt of, possession of, or importation
27 into this state of, a large-capacity magazine by a sworn peace
28 officer, as defined in Chapter 4.5 (commencing with Section 830)
29 of Title 3 of Part 2, who is authorized to carry a firearm in the
30 course and scope of that officer’s duties.

31 SEC. 6. Section 32435 of the Penal Code is amended to read:

32 32435. Section 32310 does not apply to any of the following:

33 (a) The sale of, giving of, lending of, possession of, importation
34 into this state of, or purchase of, any large-capacity magazine, to
35 or by any entity that operates an armored vehicle business pursuant
36 to the laws of this state.

37 (b) The lending and possession of large-capacity magazines by
38 an entity specified in subdivision (a) to its authorized employees,
39 while in the course and scope of employment for purposes that
40 pertain to the entity’s armored vehicle business.

1 (c) The return of those large-capacity magazines to the entity
2 specified in subdivision (a) by those employees specified in
3 subdivision (b).

4 SEC. 7. Section 32450 of the Penal Code is amended to read:

5 32450. Section 32310 does not apply to the purchase or
6 possession of a large-capacity magazine by the holder of a special
7 weapons permit issued pursuant to Section 31000, 32650, or 33300,
8 or pursuant to Article 3 (commencing with Section 18900) of
9 Chapter 1 of Division 5 of Title 2, or pursuant to Article 4
10 (commencing with Section 32700) of Chapter 6 of this division,
11 for any of the following purposes:

12 (a) For use solely as a prop for a motion picture, television, or
13 video production.

14 (b) For export pursuant to federal regulations.

15 (c) For resale to law enforcement agencies, government
16 agencies, or the military, pursuant to applicable federal regulations.

17 SEC. 8. Section 3.5 of this bill incorporates amendments to
18 Section 32310 of the Penal Code proposed by both this bill and
19 Assembly Bill 48. It shall only become operative if (1) both bills
20 are enacted and become effective on or before January 1, 2014,
21 (2) each bill amends Section 32310 of the Penal Code, and (3) this
22 bill is enacted after Assembly Bill 48, in which case Section 3 of
23 this bill shall not become operative.

24 SEC. 9. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.