

AMENDED IN SENATE MAY 17, 2019

AMENDED IN SENATE APRIL 2, 2019

AMENDED IN SENATE FEBRUARY 12, 2019

SENATE BILL

No. 55

Introduced by Senator Jackson

(Coauthors: Assembly Members Levine, Limón, and McCarty)

December 12, 2018

An act to amend Sections 29805 and 30305 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 55, as amended, Jackson. Firearms: prohibited persons.

Existing law, subject to exceptions, provides that any person who has been convicted of certain misdemeanors may not, within 10 years of the conviction, own, purchase, receive, possess, or have under their custody or control, any firearm. Under existing law, a violation of this prohibition is punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine. Existing law makes it a misdemeanor or a felony for a person who is prohibited from owning or possessing a firearm pursuant to these provisions to own, possess, or have under their custody or control, any ammunition or reloaded ammunition.

This bill would add to the list of misdemeanors, the conviction for which is subject to those prohibitions, misdemeanor offenses of violating the 10-year prohibition on possessing a firearm specified above.

The bill would apply that 10-year prohibition on possessing a firearm to a person who has been convicted of 2 or more specified misdemeanors, or 2 or more convictions of a single specified

misdemeanor, in a 3-year period involving possession of certain controlled substances for sale or vehicular manslaughter while intoxicated, or a person who is convicted of 3 or more specified offenses in a 10-year period related to driving under the influence of alcohol, and would make a violation of the prohibition punishable as a misdemeanor. *The bill would specify that these prohibitions are not retroactive to the extent that, although convictions that occurred prior to January 1, 2020, may be counted as priors, the third conviction that ultimately results in the firearms prohibition, must occur on or after January 1, 2020.* The bill would impose a new 10-year prohibition to a person who commits another of those misdemeanors during the initial 10-year prohibition period, and would make a violation also punishable as a misdemeanor. The bill would also make it a misdemeanor for a person prohibited from owning or possessing a firearm pursuant to these provisions to own, possess, or have under their custody or control, any ammunition or reloaded ammunition. By changing the definition of a crime, and by creating new crimes, 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:

1 SECTION 1. Section 29805 of the Penal Code is amended to
2 read:
3 29805. (a) Except as provided in Section 29855, subdivision
4 (a) of Section 29800, or subdivision (b), any person who has been
5 convicted of, or has an outstanding warrant for, a misdemeanor
6 violation of this section or Section 71, 76, 136.1, 136.5, or 140,
7 subdivision (d) of Section 148, subdivision (f) of Section 148.5,
8 Section 171b, paragraph (1) of subdivision (a) of Section 171c,
9 Section 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5,
10 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 422.6, 626.9, 646.9,
11 830.95, 17500, 17510, 25300, 25800, 30315, or 32625, subdivision
12 (b) or (d) of Section 26100, or Section 27510, or Section 8100,

8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 490.2 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years after the conviction, or if the individual has an outstanding warrant, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(b) Any person who is convicted, on or after January 1, 2019, of a misdemeanor violation of Section 273.5, and who subsequently owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) Any person who has been convicted of *separate* misdemeanor violations of ~~2~~ two or more of any of the following offenses, or convicted of ~~2~~ two or more *separate* misdemeanor violations of any one of the following offenses, within a ~~3-year~~ *three-year* period, and who, within 10 years after the second conviction, *if the offense that resulted in that second conviction occurred on or after January 1, 2020*, owns, purchases, receives, or has in their possession or under custody or control, any firearm, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding ~~6~~ six months, by a fine not exceeding five hundred dollars (\$500), or by both that imprisonment and fine.

(1) Possession of a controlled substance with intent to sell in violation of Section 11357.5 of the Health and Safety Code.

(2) Possession of a controlled substance with intent to sell in violation of paragraph (1) of subdivision (b) of Section 11375 of the Health and Safety Code.

(3) Possession of a controlled substance with intent to sell in violation of Section 11379.2 of the Health and Safety Code.

(4) Section 191.5.

(d) Any person who has been convicted of a violation of Section 23152, 23153, or 23103, as specified in Section 23103.5, of the Vehicle Code, in which the offense occurred *on or after*

1 *January 1, 2020, and* within 10 years of two separate offenses of
2 any of those sections, or any combination thereof, that resulted in
3 convictions, and who, within 10 years after the ~~second~~ *third*
4 conviction, owns, purchases, receives, or has in their possession
5 or under custody or control, any firearm, is guilty of a misdemeanor
6 punishable by imprisonment in a county jail not exceeding six
7 months, by a fine not exceeding five hundred dollars (\$500), or
8 by both that imprisonment and fine.

9 (e) Any person who is prohibited pursuant to subdivision (c) or
10 (d), from owning, purchasing, receiving, or having in their custody
11 or control any firearm, who is subsequently convicted of a
12 misdemeanor violation of any offense specified in paragraphs (1)
13 to (4), inclusive, of subdivision (c), or any offense specified in
14 subdivision (d) during the prohibitory period specified in
15 subdivision (c) or (d), and who, within 10 years of the subsequent
16 conviction, owns, purchases, receives, or has in possession or under
17 custody or control any firearm is guilty of a misdemeanor
18 punishable by imprisonment in a county jail not exceeding ~~6~~ *six*
19 months, by a fine not exceeding five hundred dollars (\$500), or
20 by both that imprisonment and fine.

21 (f) The court, on forms prescribed by the Department of Justice,
22 shall notify the department of persons subject to this section.
23 However, the prohibition in this section may be reduced,
24 eliminated, or conditioned as provided in Section 29855 or 29860.

25 SEC. 2. Section 30305 of the Penal Code is amended to read:

26 30305. (a) (1) No person prohibited from owning or
27 possessing a firearm under Chapter 2 (commencing with Section
28 29800) or Chapter 3 (commencing with Section 29900) of Division
29 9 of this title, or Section 8100 or 8103 of the Welfare and
30 Institutions Code, shall own, possess, or have under custody or
31 control, any ammunition or reloaded ammunition.

32 (2) (A) Except as provided in subparagraph (B), a violation of
33 this subdivision is punishable by imprisonment in a county jail not
34 to exceed one year or in the state prison, by a fine not to exceed
35 one thousand dollars (\$1,000), or by both the fine and
36 imprisonment.

37 (B) If the person is prohibited from owning or possessing a
38 firearm pursuant to subdivision (c), (d), or (e) of Section 29805,
39 a violation of this subdivision is a misdemeanor punishable by
40 imprisonment in a county jail not exceeding ~~6~~ *six* months, by a

1 fine not exceeding five hundred dollars (\$500), or by both that
2 imprisonment and fine.

3 (b) (1) A person who is not prohibited by subdivision (a) from
4 owning, possessing, or having under the person's custody or
5 control, any ammunition or reloaded ammunition, but who is
6 enjoined from engaging in activity pursuant to an injunction issued
7 pursuant to Section 3479 of the Civil Code against that person as
8 a member of a criminal street gang, as defined in Section 186.22,
9 may not own, possess, or have under the person's custody or
10 control, any ammunition or reloaded ammunition.

11 (2) A violation of this subdivision is a misdemeanor.

12 (c) A violation of subdivision (a) or (b) is justifiable where all
13 of the following conditions are met:

14 (1) The person found the ammunition or reloaded ammunition
15 or took the ammunition or reloaded ammunition from a person
16 who was committing a crime against the person who found or took
17 the ammunition or reloaded ammunition.

18 (2) The person possessed the ammunition or reloaded
19 ammunition no longer than was necessary to deliver or transport
20 the ammunition or reloaded ammunition to a law enforcement
21 agency for that agency's disposition according to law.

22 (3) The person is prohibited from possessing any ammunition
23 or reloaded ammunition solely because that person is prohibited
24 from owning or possessing a firearm only by virtue of Chapter 2
25 (commencing with Section 29800) of Division 9 or ammunition
26 or reloaded ammunition because of subdivision (b).

27 (d) Upon the trial for violating subdivision (a) or (b), the trier
28 of fact shall determine whether the defendant is subject to the
29 exemption created by subdivision (c). The defendant has the burden
30 of proving by a preponderance of the evidence that the defendant
31 is subject to the exemption provided by subdivision (c).

32 SEC. 3. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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