# No. 13-56203 IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## CHARLES NICHOLS,

Appellant-Plaintiff,

v.

EDMUND G. BROWN, Jr., in his official capacity as Governor of California, KAMALA D. HARRIS, Attorney General, in her official capacity as Attorney General of California, CITY OF REDONDO BEACH, CITY OF REDONDO BEACH POLICE DEPARTMENT, CITY OF REDONDO BEACH POLICE CHIEF JOSEPH LEONARDI, and DOES 1 to 10,

Respondents-Defendants.

On Appeal from the United States District Court for the Central District of California, Case No. 2-cv-11-09916-SJO-SS, The Honorable S. James Otero, Judge

## SUPPLEMENTAL EXCERPTS OF RECORD, VOLUME 3 (SER000220-350)

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EXHIBIT B

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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 Local Program: yes

#### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

(a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in a calendar month.

(b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.

(d) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a. debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(h) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(I) A person engaged solely in the business of securing information about persons or property from public records.

(j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where

Case 2ndloor 099465 Sho, S) iBoctument Afré diffied of 4002/14: (Page Aufic 87, entrement#1378 agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(I) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) A savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(n) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

SEC. 2. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section 7574.01, and is employed exclusively and regularly by an employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where' there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include an instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, a dirk, dagger, pistol, revolver, or any other firearm, a knife having a blade longer than five inches, a razor with an unguarded blade, and a metal pipe or bar used or intended to be used as a club.

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(d) A charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted Insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(I) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(I) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) A savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

Case 2:11-Cym09916 SJO 5: iclap formentroff 4ctr Filed 25/02/23wi Page 6 Strage 16 #:1380 (P) A peace of the Penal Code.

(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(r) The changes made to this section by the act adding this subdivision during the 2005–06 Regular Session of the Legislature shall apply as follows:

(1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.

(2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

SEC. 3. Section 626.92 of the Penal Code is amended to read:

626.92. Section 626.9 does not apply to or affect any of the following:

(a) A security guard authorized to openly carry an unloaded handgun pursuant to Chapter 6 (commencing with Section 26350) of Division 5 of Title 4 of Part 6.

(b) An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to Section 26361.

(c) A security guard authorized to openly carry an unloaded firearm that is not a handgun pursuant to Chapter 7 (commencing with Section 26400) of Division 5 of Title 4 of Part 6.

(d) An honorably retired peace officer authorized to openly carry an unloaded firearm that is not a handgun pursuant to Section 26405.

SEC. 4. Section 16505 is added to the Penal Code, to read:

**16505.** For purposes of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, a firearm is "encased" when that firearm is enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of that firearm exposed.

SEC. 5. Section 16520 of the Penal Code is amended to read:

**16520.** (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.

(4) Section 16990.

(5) Section 17070.

	(7) Sections 26500 to 26588, Inclusive.			•	•					
ı	(8) Sections 26600 to 27140, inclusive.	¥		·	,	:			•	
1	(9) Sections 27400 to 28000, inclusive.									
•	(10) Section 28100.			-				•		•
(	(11) Sections 28400 to 28415, inclusive.									· .
(	(12) Sections 29010 to 29150, inclusive,		•	,			•			•
(	(13) Sections 29610 to 29750, inclusive.	•		·						
(	(14) Sections 29800 to 29905, inclusive.									••••
(	(15) Sections 30150 to 30165, Inclusive.			• •						
(	(16) Section 31615.		•	•	• .		. •			
(	(17) Sections 31705 to 31830, inclusive.	, 7		·			•			
(	(18) Sections 34355 to 34370, inclusive.		· · ·							
(	(19) Sections 8100, 8101, and 8103 of the Welfare a	nd Inst	itutions Cod	е,	·	·	•	. <sup>.</sup>		
5	(c) As used in the following provisions, "firearm" also similar device containing an explosive or incendia emergency or distress signaling purposes:									
(	1) Section 16750.		• • •			•		•		
ļ	2) Subdivision (b) of Section 16840.		•				•	. •		
(	3) Section 25400.		•		•• •					
(	4) Sections 25850 to 26025, inclusive.		:	•	•	·.	•	•		•
(	5) Subdivisions (a), (b), and (c) of Section 26030.	÷	۹.						ļ	
(	(6) Sections 26035 to 26055, Inclusive.	•	·	•			•			
ĺ	(d) As used in the following provisions, "firearm" doe	s not ir	nclude an un	loaded a	ntique fi	rearm:				
(	(1) Subdivisions (a) and (c) of Section 16730.					•	•			· .
(	(2) Section 16550.				. :				-	
(	(3) Section 16960.		,				•••			
(	(4) Section 17310.		•				•		·	
	(5) Chapter 6 (commencing with Section 26350) of D	Division	5 of Title 4.					•		
	(6) Chapter 7 (commencing with Section 26400) of E	Division	5 of Title 4.							
	(7) Sections 26500 to 26588, inclusive.			•	·					ŀ
	(8) Sections 26700 to 26915, inclusive.	*	. •							
	(9) Section 27510.									
				• •						
	(10) Section 27530.									
•	(10) Section 27530. (11) Section 27540.		•							

Case 2:11-cv-09916-SJO-SS) Document 96-4 (13) Sections 27555 to 27570, in Sive.	Filed 05/02/13 (Page 8 of 87	Page ID #:1382
(14) Sections 29010 to 29150, inclusive.		
(e) As used in Sections 34005 and 34010, "firearm" does n	ot Include a destructive device.	

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 5.5. Section 16520 of the Penal Code Is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion,

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

(1) Section 16550.

(2) Section 16730.

(3) Section 16960.

(4) Section 16990.

(5) Section 17070.

(6) Section 17310.

(7) Sections 25250 to 25256, inclusive,

(8) Sections 26500 to 26588, inclusive.

(9) Sections 26600 to 27140, inclusive.

(10) Sections 27400 to 28000, inclusive.

(11) Section 28100.

(12) Sections 28400 to 28415, Inclusive.

(13) Sections 29010 to 29150, Inclusive.

(14) Sections 29610 to 29750, inclusive.

(15) Sections 29800 to 29905, inclusive.

(16) Sections 30150 to 30165, inclusive.

(17) Section 31615.

(18) Sections 31705 to 31830, inclusive.

(19) Sections 34355 to 34370, inclusive.

(20) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400,

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	(5) Subdivisions (a), (b), and (c) of Section 26030.	
	(6) Sections 26035 to 26055, inclusive.	i
	(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:	!
	(1) Subdivisions (a) and (c) of Section 16730.	. 1
•	(2) Section 16550.	
	(3) Section 16960.	
	(4) Section 17310.	
	(5) Sections 25250 to 25256, inclusive.	
	(6) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.	•
	(7) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.	
	(8) Sections 26500 to 26588, inclusive.	
	(9) Sections 26700 to 26915, inclusive.	
	(10) Section 27510.	
	(11) Section 27530.	р 1
	(12) Section 27540.	1
	(13) Section 27545.	
•	(14) Sections 27555 to 27570, inclusive.	. :
	(15) Sections 29010 to 29150, inclusive.	•. ;
•	(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.	
	(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code,	
	(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a	
	weapon that can be readily converted to the functional condition of a finished frame or receiver,	
	SEC. 6. Section 16750 of the Penal Code is amended to read:	
	16750. (a) As used in Section 25400, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.	
	(b) As used in Article 2 (commencing with Section 25850), Article 3 (commencing with Section 25900), and Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4, Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, and Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, "Nawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully acquired and lawfully owns the firearm or has the permission of the lawful owner or person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.	
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SEC. 7. Section 16850 of the Penal Code is amended to read:

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SEC. 8. Section 17295 of the Penal Code is amended to read:

17295. (a) For purposes of Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

(b) For purposes of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, a firearm that is not a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

SEC. 9. Section 26366.5 is added to the Penal Code, to read:

26366.5. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

SEC. 10. Section 26390 is added to the Penal Code, to read:

**26390.** Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun in any of the following circumstances:

(a) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(b) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(c) The open carrying of an unioaded handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying is conducted in accordance with the terms and conditions of the permit.

(d) The open carrying of an unloaded handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

SEC. 11. Section 26391 is added to the Penal Code, to read:

26391. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when done in accordance with the provisions of subdivision (d) of Section 171.5.

SEC. 12. Chapter 7 (commencing with Section 26400) is added to Division 5 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 7. Carrying an Unloaded Firearm That is not a Handgun in an incorporated City or City and County Article 1. Crime of Carrying an Unloaded Firearm that is not a Handgun in an incorporated City or City and County

26400. (a) A person is guilty of carrying an unloaded firearm that is not a handgun in an incorporated city or city and county when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while in the incorporated city or city and county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

#### AG0081

Case 2:11-cv-09916-Site SS Document 96-4 Filed 05/02/13 Page 11 of 87 Page ID (2) A violation of subdivision (a) punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if the firearm and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not in lawful possession of that firearm.

(c) (1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

(d) Notwithstanding the fact that the term "an unloaded firearm that is not a handgun" is used in this section, each individual firearm shall constitute a distinct and separate offense under this section.

Article 2. Exemptions

26405. Section 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances:

(a) By a person when done within a place of business, a place of residence, or on private property, if that person, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

(b) By a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

(c) When the firearm is either in a locked container or encased and it is being transported directly between places where a person is not prohibited from possessing that firearm and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(d) If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (a), the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(e) By a peace officer or an honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

(f) By a person to the extent that person may openly carry a loaded firearm that is not a handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

(g) As merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in **firearms** and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

(h) By a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

(I) By a member of a club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a firearm that is not a handgun at that target range.

(j) By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition.

Case 2:11-cy-09916-SJO-SS Document 96-4 Filed 05/02/13 Page 12 of 87 Page ID (k) Incident to transportation in analysis by a person operating a license common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

(I) By a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

(m) Within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

(n) Within a school zone, as defined in Section 626.9, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.

(o) When In accordance with the provisions of Section 171b.

(p) By a person while engaged in the act of making or attempting to make a lawful arrest.

(q) By a person engaged in **firearms**-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of **firearms**, or related to **firearms** training.

(r) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

(s) Incident to obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 23910.

(t) At an established public target range while the person is using that firearm upon that target range.

(u) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

(v) Incident to any of the following:

(1) Complying with Section 27560 or 27565, as it pertains to that firearm.

(2) Section 28000, as It pertains to that firearm.

(3) Section 27850 or 31725, as it pertains to that firearm.

(4) Complying with Section 27870 or 27875, as it pertains to that firearm.

(5) Complying with Section 27915, 27920, or 27925, as it pertains to that firearm.

(w) Incident to, and in the course and scope of, training of, or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

(x) Incident to, and in the course and scope of, training of, or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

(y) Incident to and at the request of a sheriff, chief, or other head of a municipal police department.

(z) If all of the following conditions are satisfied:

(1) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(2) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(3) ARE Aldabeev field on a 10-25 a Backumento 96-4eliveited b 05/02/13 Pease 10 304 87to, Page 10 operating in accordance with, Sections 26700 to 26925 #nt BSVe.

(aa) Pursuant to paragraph (3) of subdivision (b) of Section 171c.

(ab) Pursuant to Section 171d.

(ac) Pursuant to subparagraph (F) of paragraph (1) of subdivision (c) of Section 171.7.

(ad) On publicly owned land, if the possession and use of unloaded firearm that is not a handgun is specifically permitted by the managing agency of the land and the person carrying that firearm is in lawful possession of that firearm.

(ae) By any of the following:

(1) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(2) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(3) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(4) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(af) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

(ag) Pursuant to the provisions of subdivision (d) of Section 171.5.

(ah) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while the firearm is being used in the lawful course and scope of the licensee's activities as a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and regulations issued pursuant thereto.

(ai) On the navigable waters of this state that are held in public trust, if the possession and use of an unloaded firearm that is not a handgun is not prohibited by the managing agency thereof and the person carrying the firearm is in lawful possession of the firearm.

**SEC. 13.** Section 5.5 of this bill incorporates amendments to Section 16520 of the Penal Code proposed by both this bill and Senate Bill 1366. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 16520 of the Penal Code, and (3) this bill is enacted after Senate Bill 1366, in which case Section 5 of this bill shall not become operative.

**SEC. 14.** No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

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# LEGISLATIVE INFORMATION

AB-1527 Firearms. (2011-2012)

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Date	Result	Location	Ayes	Noes	NVR	Motion
/29/12	(PASS)	Assembly Floor	47	31	2	AB 1527 PORTANTINO Concurrence In Senate Amendments
• •		Calderon, Campos, Carter,	Cedillo, D Iso, Huffm	avis, Dick an, Lara,	inson, En Bonnie Lo	enfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles g, Feuer, Fletcher, Fong, Fuentes, Gatto, Gordon, Hall, Hayashi, wenthal, Ma, Mendoza, Mitchell, Monning, Pan, Portantino, Skinner, a, John A. Pérez
			nes, Knigh	t, Logue,		Donnelly, Beth Gaines, Garrick, Gorell, Grove, Hagman, Halderman, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, V. Manuel
•		No Votes Recorded: Fur	ıtani, Galg	lani	1.	
				1		
06/27/12	(PASS)	Senate Floor	23	15 .	2	Assembly 3rd Reading AB1527 Portantino By De León
						Evans, Hancock, Hernandez, Kehoe, Leno, Lleu, Llu, Lowenthal, Steinberg, Vargas, Wolk, Yee
		Noes: Anderson, Berryhill, Strickland, Walters, Wright		, Cannelia	, Correa,	Dutton, Emmerson, Fuller, Galnes, Harman, Huff, La Malfa,
		No Votes Recorded: Run	ner, Wylai	nd .		
•				- <u></u>		
38/06/12	(PASS)	Sen Appropriations	5	2	0 .:	Do pass.
		Ayes: Alquist, Kehoe, Lieu	, Price, St	einberg		
•		Noes: Dutton, Walters				
		No Votes Recorded: .			•••	
	`. 					
06/26/12	(PASS)	Sen Public Safety	5	2	0.	Do pass, but re-refer to the Committee on Appropriations.
	•	Ayes: Calderon, Hancock,	Llu, Price	, Steinber	g 	
, ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		Noes: Anderson, Harman		•		
		No Votes Recorded:		·		
			T	1.00		
05/03/12	(PASS)	Assembly Floor	44 .	29	7	AB 1527 PORTANTINO Assembly Third Reading
•		Campos, Carter, Cedillo, D	oavis, Dick wenthal, M	inson, En la, Meπdo	g, Feuer, za, Mitche	nenfield, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Fong, Fuentes, Galgiani, Gatto, Gordon, Hayashi, Hill, Hueso, II, Monning, Pan, Portantino, Skinner, Solorio, Swanson, Torres,
						r, Donnelly, Beth Gaines, Garrick, Gorell, Grove, Hagman, Halderman, -, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, Silva,
		No Votes Recorded: Bor	nilia, Fletc	her, Furut	ani, Hall,	Roger Hernández, V. Manuel Pérez, Smyth
·		,				
04/18/12	(PASS)	Asm Appropriations	12	5	.0	Do pass.
		Ayes: Blumenfield, Bradfi	ord, Charl	es Caldero	on, Campo	os, Davis, Fuentes, Gatto, Hall, Hill, Lara, Mitchell, Solorio
		Noes: Donnelly, Harkey,	Nielsen, N	orby, Wa	gner	
		No Votes Recorded:				
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		Asm Public Safety	4	2	0	Do pass as amended and be re-referred to the Committee on

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		No Votes Recor	ded:											, , , , , , , , , , , , , , , , , , ,
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LEGISLATIVE INFORMATION

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AB-1527 Firearms. (2011-2012)

Date	Action
09/28/12	Chaptered by Secretary of State - Chapter 700, Statutes of 2012.
09/28/12	Approved by the Governor.
09/13/12	Enrolled and presented to the Governor at 12:15 p.m.
08/29/12	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 47. Noes 31. Page 6503.).
08/29/12	Assembly Rule 77 suspended. (Page 6488.)
08/28/12	In Assembly, Concurrence in Senate amendments pending, May be considered on or after August 30 pursuant to Assembly Rule 77,
08/27/12	Read third time. Passed. Ordered to the Assembly. (Ayes 23. Noes 15. Page 4873.).
08/23/12	Read second time. Ordered to third reading.
08/22/12	Read third time and amended. Ordered to second reading,
08/08/12	Read second time. Ordered to third reading.
08/07/12	From committee; Do pass. (Ayes 5, Noes 2.) (August 6).
06/26/12	From committee: Do pass and re-refer to Com, on APPR. (Ayes 5, Noes 2.) (June 26). Re-referred to Com. on APPR.
05/17/12	Referred to Com, on PUB, S,
05/03/12	In Senate, Read first time. To Com, on RLS, for assignment,
05/03/12	Read third time, Passed. Ordered to the Senate. (Ayes 44, Noes 29. Page 4661.)
04/19/12	Read second time, Ordered to third reading.
04/18/12	From committee: Do pass, (Ayes 12, Noes 5,) (April 18).
04/11/12	Re-referred to Com. on APPR.
04/10/12	Read second time and amended.
04/09/12	From committee: Do pass as amended and re-refer to Com, on APPR. (Ayes 4, Noes 2,) (March 27).
03/08/12	Re-referred to Com. on PUB. S.
03/07/12	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
02/02/12	Referred to Com. on PUB. S.
01/24/12	From printer, May be heard in committee February 23,
01/23/12	Read first time. To print,

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	#:1391 California LEGISLATIVE INFORMATION		
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	Bill Analysis 08/28/12- Assembly Floor Analysis		•
- 1	08/23/12- Senate Floor Analyses		
	08/16/12- Senate Appropriations 08/08/12- Senate Floor Analyses		
1	08/05/12- Senate Appropriations		•
	06/25/12- Senate Public Safety.		
- 1	04/20/12- Assembly Floor Analysis 04/17/12- Assembly Appropriations	•	
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AB 1527 Page 1

#### CONCURRENCE IN SENATE AMENDMENTS AB 1527 (Portantino and Ammiano) As Amended August 22, 2012 Majority vote

#### ASSEMBLY: 44-29 (May 3, 2012) SENATE: 23-15 (August 27, 2012)

Original Committee Reference: PUB. S.

<u>SUMMARY</u>: Makes it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county.

The Senate amendments add double jointing language to avoid chaptering problems with SB 1366 (De Saulnier).

<u>AS PASSED BY THE ASSEMBLY</u>, this bill made it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgum on his or her person outside a motor vehicle in an incorporated city or city and county. Specifically, <u>this bill</u>

- 1) Made it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.
- 2) Stated that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 3) Provided that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 4) Provided that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:
  - a) By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property;
  - b) When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances;

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<u>AB 1527</u> Page 2

c) If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified;

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- d) By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified;
- e) By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States;
- f) As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business;
- g) By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization;
- h) By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
- i) By a licensed hunter while engaged in lawful hunting or while transporting that firearm while going to or returning from that hunting expedition;
- j) Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
- k) By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
- 1) Within a licensed gun show;
- m) Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
- n) When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
- o) By any person while engaged in the act of making or attempting to make a lawful arrest;
- p) By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or

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#### <u>AB 1527</u> Page 3

#### related to firearms training;

q) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;

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- r) Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- s) At any established public target range while the person is using that firearm upon the target range;
- By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- u) Complying with specified provisions of law relating to the regulation of firearms;
- v) Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training;
- w) Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon;
- x) Incident to and at the request of a sheriff or chief or other head of a municipal police department;
- y) If all of the following conditions are satisfied:
  - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
  - ii) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and,
  - iii) The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
- z) By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol;
- aa) By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion;
- bb) By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a

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weapon within a public transit system;

cc) On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun;

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- dd) The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit;
- ee) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from the training;
- ff) By a person in compliance with specified provisions related to carrying a firearm in an airport; or,
- gg) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.
- 5) Exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.
- 6) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.
- Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in an airport.
- 8) Made conforming technical changes.

FISCAL EFFECT: According to the Senate Appropriations Committee

- 1) Ongoing court costs for increased misdemeanor filings potentially in excess of \$100,000 (General Fund) per year, offset to a degree by fine revenue.
- 2) Potential non-reimbursable local enforcement and incarceration costs, offset to a degree by fine revenue.
- 3) While the impact of this bill independently on local jails could be minor, the cumulative effect of increasing the number of misdemeanors filed could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources in the context of recently enacted 2011 Public Safety Realignment.

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<u>COMMENTS</u>: According to the author, "AB 1527 is a modified version of AB 144 from last session. AB 1527 bans the open carrying of an unloaded firearm that is not a handgun in an incorporated city or city and county, with specific exceptions." The absence of a prohibition on 'open carry' of long guns has created an increase in problematic instances of these guns carried in public, alarming unsuspecting individuals causing issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls has placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

Please see the policy committee for a full discussion of this bill.

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

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engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training; and (5) creates an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals, as specified.

Senate Floor Amendments of 8/22/12 exempt from the bill's prohibition on openly carrying unloaded long guns in incorporated cities the carrying of such guns "on the navigable waters of this state that are held in public trust". and add double-jointing with SB 1366, to prevent chaptering out.

ANALYSIS: Existing law makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his/her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. (Penal Code (PEN) Section 26350(a)(1)

Existing law makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm. (PEN Section 26350(a)(2))

Existing law prohibits the carrying of a loaded firearm on his/her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. This offense is a misdemeanor, punishable by up to one year in the county jail, a fine of up to \$1,000, or both, unless various aggravating circumstances are present, in which case this offense it is punishable as a felony. (PEN Section 25850)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of PEN Section 12031 when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except

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that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder. (PEN Section 16840(b))

Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code Section 2006)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine. (Id.)

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where
   the person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (PEN Section 25858(c))

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This bill makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his/her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.

#:1400

This bill states that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.

This bill states that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his/her person outside a vehicle in specified areas does not apply under any of the following circumstances:

- By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property.
- When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances.
- If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his/her life or safety, as specified.
- By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.
- By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.

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#:1401

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- As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business.
- By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- Within a licensed gun show.
- Within a school zone, as defined, with the written permission of the school district superintendent, his/her designee, or equivalent school authority.
- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- By any person while engaged in the act of making or attempting to make a lawful arrest.
- By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- By an authorized participant in, or an authorized employee or agent of a . supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event.

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• Incident to obtaining an identification number or mark assigned for that handgun from the DOJ.

#:1402

- At any established public target range while the person is using that firearm upon the target range.
- By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
- Complying with specified provisions of law relating to the regulation of firearms.
- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training.
- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon.
- Incident to and at the request of a sheriff or chief or other head of a municipal police department.
- If all of the following conditions are satisfied:
  - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
  - The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
  - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
  - By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
  - By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion.
  - By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit\_system.

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- On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit.
- By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning form the training.
- By a person in compliance with specified provisions related to carrying a firearm in an airport.
- By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.

This bill states that, for purposes of the prohibition on openly carrying an unloaded firearm that is not a handgun, the definition of "firearm" does not include any antique firearm.

This bill exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a schoolzone.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals.

Existing law also exempts from the provisions of carrying an exposed and unloaded handgun a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while the firearm is being

AG0099

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ARGUMENTS IN OPPOSITION: The National Association for Gun Rights states, "Rifles and shotguns are hardly the weapons of choice for the common criminal. This is yet another attempt to prohibit something because it 'looks scary.' In a recent press release, Assemblyman Anthony Portantino admitted this bill is merely retaliation against law-abiding citizens who chose to peacefully exercise their First Amendment right of free speech in support of their Second Amendment rights after passage of last year's Open Carry Ban. Punishing citizens for engaging in lawful public demonstration is an outrageous abuse of power, further infringing on their constitutionally protected rights. Currently twenty-eight states allow for the Open Carry of firearms in some form without a permit, and an additional thirteen allow Open Carry with a permit. Eight states and the District of Colombia ban open carry; half of which are remnants of the 'Jim Crow' era where the intent was to prevent African-Americans from possessing firearms. Open Carry should be viewed in the same light as [] concealed carry: if a person is legally able to purchase a firearm, it is not the place of the state to deny their right to carry it."

#:1406

### ASSEMBLYFLOOR: 44-29, 5/3/12

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Galgiani, Gatto, Gordon, Hayashi, Hill. Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, Portantino, Skinner, Solorio, Swanson, Torres, Wieckowski, Williams, Yamada, John A. Pérez NOES: Achadijan, Bill Berryhill, Chesbro, Conway, Cook, Donnelly, Beth Gaines, Garrick, Gorell, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, Silva, Valadao, Wagner NO VOTE RECORDED: Bonilla, Fletcher, Furutani, Hall, Roger Hernández, V. Manuel Pérez, Smyth

RJG:d 8/23/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE \*\*\*\* END \*\*\*\*

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# #:1407

#### Senate Appropriations Committee Fiscal Summary Senator Christine Kehoe, Chair

AB 1950 (Davis) – Prohibited business practices: enforcement.

Amended: August 6, 2012 Urgency: No Hearing Date: August 16, 2012 Policy Vote: Judiciary 4-0 Mandate: Yes Consultant: Jolle Onodera

SUSPENSE FILE.

Bill Summary: AB 1950 would remove the January 1, 2013, sunset date on the prohibition from unlawfully performing mortgage loan modification or loan forbearance services. This bill would extend the statute of limitations period for prosecution of certain real estate-related misdemeanors, as specified, and would provide that it is unlawful to act as a mortgage loan originator without being licensed.

#### Fiscal Impact:

- Ongoing court costs for increased misdemeanor filings potentially in excess of \$100,000 (General Fund) per year, offset to a degree by fine revenue.
- Potential non-reimbursable local enforcement and incarceration costs, offset to a degree by fine revenue.
- While the impact of this bill independently on local jails could be minor, the cumulative effect of increasing the number of misdemeanors filed could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources in the context of recently enacted 2011 Public Safety Realignment.

Background: This bill is part of the Attorney General's package of mortgage fraud reform termed the "California Homeowner Bill of Rights." This bill seeks to enable more thorough investigations and prosecutions of mortgage-related crime. In May 2011, the Attorney General announced the creation of the Mortgage Fraud Strike Force whose purpose is to monitor and prosecute violations related to all steps in the mortgage process. The Attorney General has indicated the one-year statute of limitations on various mortgage-related crimes has inhibited a number of prosecutions due to the protracted nature of the foreclosure process and the delayed discovery of illegal activity.

Existing law, until January 1, 2013, prohibits any person, real estate licensee, or attorney who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearances for a fee or other compensation paid by the borrower to do any of the following:

- Claim, demand, charge, collect, or receive any compensation until after the person or licensee has fully performed each and every service he or she contracted to perform or represented that he or she would perform.
- Take any wage assignment, any lien of any type on real or personal property, or any other security to secure the payment of compensation.

AG0103

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Take any power of attorney from the borrower for any purpose.

A violation of the above provision is a misdemeanor, punishable by a fine not exceeding \$10,000 (\$50,000 if the party violating the law is a corporation), imprisonment in the county jail for up to one year, or by both a fine and imprisonment, and provides that those penalties are cumulative to any other remedies or penalties provided by law.

Existing law generally applies a one year statute of limitations to the prosecution of violations of California laws not punishable by death or imprisonment in the state prison or pursuant to subdivision (h) of PC section 1170.

**Proposed Law:** This bill seeks to expand protections related to mortgage fraud. Specifically, this bill:

- Deletes the January 1, 2013, sunset date on the prohibition against charging upfront fees, thereby extending the prohibition Indefinitely.
- Deletes the January 1, 2013, sunset date on Business and Professions Code section 10085.6 and Civil Code section 2944.7 which apply to real estate
- Ilcensees and other persons, thereby extending these provisions indefinitely.
  Extends the statute of limitations from one year to three years after discovery of
  - the offense or completion of the offense, whichever is later, for prosecution of misdemeanor violations of the following:
    - o Prohibition against the practice of law by unlicensed or disbarred persons.
    - Prohibition against collecting up-front fees in connection with offers to help borrowers obtain mortgage loan modifications or forbearance.
    - o Prohibition against the practice of real estate by unlicensed persons.
    - Requirement for real estate licensees to provide a specified notice to borrowers before entering into a fee agreement in connection with offers to help obtain mortgage loan modifications or forbearance.
    - General requirement to provide a specified notice to borrowers before entering into a fee agreement with them in mortgage loan transactions.
    - General prohibition against collecting up-front fees in connection with offers to help borrowers obtain mortgage loan modifications or forbearance.
  - Provides that it is unlawful to act as a mortgage loan originator without being licensed.

**Related Legislation:** SB 980 (Vargas) 2012 would extend the sunset date on the provisions of SB 94 from January 1, 2013, to January 1, 2017. This bill has been referred to the Assembly Committee on Appropriations.

SB 94 (Calderon) Chapter 630/2009 prohibits, until January 1, 2013, any person who, for a fee, assists a borrower in obtaining a loan modification from charging compensation before a service is completed.

Staff Comments: The provisions of this bill will likely result in an increased number of misdemeanor court filings that otherwise would not have occurred under existing law in the absence of the removal of the sunset date and the extension of the statute of limitations from one to three years for specified offenses. It is unknown how many

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additional filings will result due to the provisions of this bill. The Judicial Council would incur costs for increased misdemeanor filings of approximately \$120,500 (General Fund) statewide for 250 new misdemeanors filed annually, offset to a degree by fine revenue. This estimate equates to less than five misdemeanor filings per county per year. To the extent the actual number of annual filings per county is greater, associated costs to the courts could be significantly higher.

The creation of new, or the extension of existing, misdemeanors has historically been analyzed by this Committee to result in non-reimbursable state mandated costs for local law enforcement and incarceration. Staff notes, however, that the potential for an increased number of misdemeanor convictions taken cumulatively could increase the statewide adult jail population to a degree that could potentially impact the flexibility of counties to manage their jail populations recently increased under the 2011 Public Safety Realignment. While the provisions of this bill could be minor, the cumulative effect of all additional misdemeanors could create unknown General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources.

AG0105

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## SENATE RULES COMMITTEE

Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478

## THIRD READING

Bill No:AB 1527Author:Portantino (D)Amended:4/10/12 in AssemblyVote:21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 6/26/12 AYES: Hancock, Calderon, Liu, Price, Steinberg NOES: Anderson, Harman

<u>SENATE APPROPRIATIONS COMMITTEE</u>: 5-2, 8/6/12 AYES: Kehoe, Alquist, Lieu, Price, Steinberg NOES: Walters, Dutton

ASSEMBLY FLOOR: 44-29, 5/3/12 - See last page for vote

**<u>SUBJECT</u>**: Openly carrying long guns

**SOURCE:** California Police Chiefs Association Peace Officer Research Association of California

**DIGEST:** This bill (1) makes it a misdemeanor, punishable by up to six months in a county jail, or a fine of up to \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his/her person outside a vehicle while in an incorporated city or city and county; (2) makes this offense punishable by up to one year in the county jail, or a fine of up to \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm; (3) establishes numerous exemptions from this prohibition; (4) creates an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a licensed hunter while actually

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engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training; and (5) creates an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals, as specified.

#:1411

ANALYSIS: Existing law makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his/her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. (Penal Code (PEN) Section 26350(a)(1))

Existing law makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm. (PEN Section 26350(a)(2))

Existing law prohibits the carrying of a loaded firearm on his/her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. This offense is a misdemeanor, punishable by up to one year in the county jail, a fine of up to \$1,000, or both, unless various aggravating circumstances are present, in which case this offense it is punishable as a felony. (PEN Section 25850)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of PEN Section 12031 when there is an unexpended cartridge or . shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder. (PEN Section 16840(b))

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Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code Section 2006)

#:1412

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine. (Id.)

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor.

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law:
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (PEN Section 25858(c))

This bill makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his/her person

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AG0108 ...

AB 1527 Page 4

outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one. year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.

This bill states that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.

This bill states that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his/her person outside a vehicle in specified areas does not apply under any of the following circumstances:

- By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property.
- When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances.
- If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his/her life or safety, as specified.
- By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.
- By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.
- As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business.

AG0109

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:#:1414

<u>AB 1527</u> Page 5

- By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- Within a licensed gun show.
- Within a school zone, as defined, with the written permission of the school district superintendent, his/her designee, or equivalent school authority.
- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- By any person while engaged in the act of making or attempting to make a lawful arrest.
- By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event.
- Incident to obtaining an identification number or mark assigned for that handgun from the DOJ.

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• At any established public target range while the person is using that firearm upon the target range.

#:1415

- By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
- Complying with specified provisions of law relating to the regulation of firearms.
- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training.
- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon.
- Incident to and at the request of a sheriff or chief or other head of a municipal police department.
- If all of the following conditions are satisfied:
  - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
  - The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
  - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
  - By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
  - By a person exempted from the prohibition against carrying a loaded frearm within the Governor's Mansion.
  - By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system.
  - On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.

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Case 2:11-cv-09916-SJO-SS Document 96-4 Filed 05/02/13 Page 42 of 87 Page ID

AB 1527 Page 7

• The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit.

#:1416

- By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning form the training.
- By a person in compliance with specified provisions related to carrying a firearm in an airport.
- By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.

This bill states that, for purposes of the prohibition on openly carrying an unloaded firearm that is not a handgun, the definition of "firearm" does not include any antique firearm.

This bill exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a schoolzone.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals.

This bill makes conforming technical changes.

Prior Legislation

AB 144 (Portantino), Chapter 725, Statutes of 2011, passed the Senate Floor (21-18) on 9/8/11.

AG0112

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AB 1934 (Saldana, 2010) died on Assembly Concurrence.

AB 98 (Cohn, 2005) held on Suspense in the Assembly Appropriations Committee.

#:1417

AB 2501 (Horton, 2004) failed passage in the Assembly Public Safety Committee.

AB 2828 (Cohn, 2004) failed passage in the Assembly Public Safety Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes.

According to the Senate Appropriations Committee:

- Potential ongoing court costs of \$24,000 to \$48,000 (General Fund) for 50 to 100 additional misdemeanor filings per year.
- Potential-non-reimbursable local enforcement and incarceration costs. offset to a degree by fine revenue.
- While the impact of this bill independently is likely to be minor, the cumulative effect of all new misdemeanors could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources in the context of recently enacted 2011 Public Safety Realignment.

## SUPPORT: (Verified 8/8/12)

California Police Chiefs Association (co-source) Peace Officer Research Association of California (co-source) California Chapters of the Brady Campaign Against Gun Violence California Peace Officers Association Coalition Against Gun Violence Law Center to Prevent Gun Violence Los Angeles Sheriff's Department Women Against Gun Violence

## **OPPOSITION:** (Verified 8/8/12)

California Rifle and Pistol Association National Association for Gun Rights National Rifle Association of America

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AB 152' Page 9

## Save Our State

ARGUMENTS IN SUPPORT: The Peace Officer Research Association states:

#:1418 ·

The practice by individuals and organizations to "openly carry" firearms in public places in order to challenge law enforcement and firearms statutes in California is increasing in frequency. While PORAC understands that most of these open carry demonstrations are being done by law abiding citizens, it places law enforcement and the public in a precarious and possible dangerous situation. Most often, law enforcement is called to the scene based on a citizen or merchant complaint. When the officer arrives at the scene, it is their obligation to question those persons carrying the firearms and to inquire as to whether the firearm is loaded. Until that officer has physically seen if the firearm is loaded, that officer must assume that their lives and the lives of those around them may be in danger.

Again, these situations are potentially dangerous and should not occur in a public place wherein any number of things could go wrong. We believe this bill will be very helpful in preventing these potentially unsafe incidents from happening.

ARGUMENTS IN OPPOSITION: The National Association for Gun Rights states, "Rifles and shotguns are hardly the weapons of choice for the common criminal. This is yet another attempt to prohibit something because it 'looks scary.' In a recent press release, Assemblyman Anthony Portantino admitted this bill is merely retaliation against law-abiding citizens who. chose to peacefully exercise their First Amendment right of free speech in support of their Second Amendment rights after passage of last year's Open Carry Ban. Punishing citizens for engaging in lawful public demonstration is an outrageous abuse of power, further infringing on their constitutionally protected rights. Currently twenty-eight states allow for the Open Carry of firearms in some form without a permit, and an additional thirteen allow Open Carry with a permit. Eight states and the District of Colombia ban open carry; half of which are remnants of the 'Jim Crow' era where the intent was to prevent African-Americans from possessing firearms. Open Carry should be viewed in the same light as [] concealed carry: if a person is legally able to purchase a firearm, it is not the place of the state to deny their right to carry it."

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## ASSEMBLYFLOOR: 44-29, 5/3/12

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Galgiani, Gatto, Gordon, Hayashi, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, Portantino, Skinner, Solorio, Swanson, Torres, Wieckowski, Williams, Yamada, John A. Pérez
NOES: Achadjian, Bill Berryhill, Chesbro, Conway, Cook, Donnelly, Beth Gaines, Garrick, Gorell, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, Silva, Valadao, Wagner
NO VOTE RECORDED: Bonilla, Fletcher, Furutani, Hall, Roger Hernández, V. Manuel Pérez, Smyth

RJG:d 8/8/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE \*\*\*\* END \*\*\*\*

## SER000264

#### Case 2:11-cv-09916-SJO-SS Document 96-4 Filed 05/02/13 Page 46 of 87 Page ID #:1420

#### Senate Appropriations Committee Fiscal Summary Senator Christine Kehoe, Chair

AB 1527 (Portantino) - Firearms: openly carrying long guns.

Amended: April 10, 2012 Urgency: No Hearing Date: August 6, 2012 Policy Vote: Public Safety 5-2 Mandate: Yes Consultant: Jolie Onodera

This bill does not meet the criteria for referral to the Suspense File.

**Bill Summary:** AB 1527 would make it a misdemeanor, subject to numerous exemptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county. This bill creates additional exemptions from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public space, as specified.

#### Fiscal Impact:

- Potential ongoing court costs of \$24,000 to \$48,000 (General Fund) for 50 to 100 additional misdemeanor filings per year.
- Potential non-reimbursable local enforcement and incarceration costs, offset to a degree by fine revenue.
- While the Impact of this bill independently is likely to be minor, the cumulative effect of all new misdemeanors could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources in the context of recently enacted 2011 Public Safety Realignment.

**Background:** Existing law makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Openly carrying an unloaded handgun is also prohibited if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.

**Proposed Law:** This bill would make it a misdemeanor to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, to be punishable as follows:

- By up to six months in a county jail, or a fine of up to \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county.
- By up to one year in the county jail, or a fine of up to \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.

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This bill provides numerous exemptions to the prohibition on the carrying of an unloaded firearm that is not a handgun outside a vehicle in specified areas, including but not limited to the following:

 By a person when done within a place of business, a place of residence, or on private property, if that person may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

 When the firearm is either in a locked container or encased and it is being transported directly between places where a person is not prohibited from possessing that firearm and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order absent a factual finding of a specific threat to the person's life or safety.

• By a peace officer or an honorably retired peace officer if that officer may carry a concealed firearm or a loaded firearm pursuant to existing law.

- As merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.
- By a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.
- By a member of a club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a firearm that is not a handgun at that target range.
- By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition.
- Incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.
- By a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while
- rehearsing or practicing for official parade duty or ceremonial occasions.
- Within a gun show.

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- Within a school zone, as defined, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.
- By a person while engaged in the act of making or attempting to make a lawful arrest.

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- By a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.
- At an established public target range while the person is using that firearm upon that target range.

This bill creates the following exemptions from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public space:

- A licensed hunter while engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.
- A person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals.

**Related Legislation:** AB 144 (Portantino) Chapter 725/2011 made it a misdemeanor punishable by up to six months in jail and a \$1,000 fine to openly carry an unloaded handgun on one's person, as specified, and established specified exceptions to this prohibition.

**Staff Comments:** The provisions of this bill will result in non-reimbursable local law enforcement costs offset to a degree by fine revenue. The Judicial Council has indicated costs for increased misdemeanor filings could result in increased costs of approximately \$24,000 to \$48,000 (General Fund) statewide if 50 to 100 new misdemeanors are filed annually.

The creation of new misdemeanors has historically been analyzed by this Committee to result in non-reimbursable state mandated costs for local law enforcement and incarceration. Staff notes, however, that the creation of new misdemeanors taken cumulatively could increase the statewide adult jail population to a degree that could potentially impact the flexibility of counties to manage their jail populations recently increased under the 2011 Public Safety Realignment. While the provisions of this bill are likely to be minor, the cumulative effect of all new misdemeanors could create unknown General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources.

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#### SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair . 2011-2012 Regular Session

AB 1527 (Portantino) As April 10, 2012 Hearing date: June 26, 2012 Business and Professions Code; Penal Code SM:dl

#### OPENLY CARRYING LONG GUNS

#### HISTORY

Source:

California Police Chiefs Association; Peace Officer Research Association of California

Prior Legislation: AB 144 (Portantino) - Chapter 725, Statutes of 2011

AB 1934 (Saldana) - 2010, died on Assembly Concurrence

AB-98 (Cohn) - 2005, held on Suspense in Assembly Appropriations AB 2501(Horton) - 2004, failed passage in Assembly Public Safety AB 2828 (Cohn) - 2004, failed passage in Assembly Public Safety

Support: California Chapters of the Brady Campaign Against Gun Violence; California Peace Officers Association; Coalition Against Gun Violence; Los Angeles Sheriff's Department; Women Against Gun Violence; Law Center to Prevent Gun Violence

Opposition: California Rifle and Pistol Association; National Association for Gun Rights; Save Our State; National Rifle Association of America

Assembly Floor Vote: Ayes 44 - Noes 29

#### KEY ISSUES

SHOULD IT BE A MISDEMEANOR, PUNISHABLE BY UP TO SIX MONTHS IN A COUNTY JAIL, OR A FINE OF UP TO \$1,000, OR BOTH, FOR A PERSON TO CARRY AN UNLOADED FIREARM THAT IS NOT A HANDGUN ON HIS OR HER PERSON OUTSIDE A VEHICLE WHILE IN AN INCORPORATED CITY OR CITY AND COUNTY, EXCEPT AS SPECIFIED?

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SHOULD THIS OFFENSE BE PUNISHABLE BY UP TO ONE YEAR IN THE COUNTY JAIL, OR A FINE OF UP TO \$1,000, OR BOTH, IF THE FIREARM AND UNEXPENDED AMMUNITION CAPABLE OF BEING FIRED FROM THAT FIREARM ARE IN THE IMMEDIATE POSSESSION OF THAT PERSON AND THE PERSON IS NOT IN LAWFUL POSSESSION OF THAT FIREARM?

#### PURPOSE

The purpose of this bill is to (1) make it a misdemeanor, punishable by up to six months in a county jail, or a fine of up to \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county; (2) make this offense punishable by up to one year in the county jail, or a fine of up to \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm; (3) establish numerous exemptions from this prohibition; (4) create an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training; and (5) create an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals, as specified.

Existing law makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or both, for any person to carry an exposed and <u>unloaded handgun</u> outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. (Penal Code § 26350(a)(1).)

Existing law makes the crime of openly carrying an <u>unloaded handgun</u> punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm. (Penal Code § 26350(a)(2).)

Existing law prohibits the carrying of a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. This offense is a misdemeanor, punishable by up to one year in the

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county jail, a fine of up to \$1,000, or both, unless various aggravating circumstances are present, in which case this offense it is punishable as a felony. (Penal Code § 25850.)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of Penal Code Section 12031 when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm: except that a nuzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder. (Penal Code § 16840(b).)

Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code § 2006.)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine. (Id.)

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felonymisdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen :
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the DOJ as the registered owner of the firearm.

(Penal Code § 25858(c).)

This bill makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and

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county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.

#:1426

This bill states that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.

<u>This bill</u> states that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:

- By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property.
- When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances.
- If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified.
- By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.
- By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.
- As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business.
- By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- Incident to transportation of a handgum by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.

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By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.

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- Within a licensed gun show.
- Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority.
- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- By any person while engaged in the act of making or attempting to make a lawful arrest.
- By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event.
- Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ).
- At any established public target range while the person is using that firearm upon the target range.
- By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
- Complying with specified provisions of law relating to the regulation of firearms.
- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training.
- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon.
- Incident to and at the request of a sheriff or chief or other head of a municipal police department.
- If all of the following conditions are satisfied:
  - The open carrying occurs at an auction or similar event of a nonprofit or mutual 0 benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
  - o The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
  - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.

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- By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
- By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion.
- By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system.
- On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit.
- By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning form the training.
- By a person in compliance with specified provisions related to carrying a frearm in an airport.
- By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the frearm is being used in the lawful course and scope of the licensee's activities, as specified.

This bill states that, for purposes of the prohibition on openly carrying an unloaded firearm that is not a handgun, the definition of "firearm" does not include any antique firearm.

<u>This bill</u> exempts security guards and retired peace officers who are authorized to carry an unloaded <u>firearm that is not a handgun</u> from the prohibition against possessing a firearm in a school zone.

This bill exempts from the prohibition against carrying an exposed and unloaded <u>handgun</u> outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

<u>This bill</u> exempts from the prohibition against carrying an exposed and unloaded <u>handgun</u> outside a vehicle in a public place a person in compliance with specified provisions related to carrying a frearm in airports and commuter passenger terminals.

This bill makes conforming technical changes.

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#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION ("ROCA")

In response to the unresolved prison capacity crisis, since early 2007 it has been the policy of the chair of the Senate Committee on Public Safety and the Senate President pro Tem to hold legislative proposals which could further aggravate prison overcrowding through new or expanded felony prosecutions. Under the resulting policy known as "ROCA" (which stands for "Receivership/Overcrowding Crisis Aggravation"), the Committee has held measures which create a new felony, expand the scope or penalty of an existing felony, or otherwise increase the application of a felony in a manner which could exacerbate the prison overcrowding crisis by expanding the availability or length of prison terms (such as extending the statute of limitations for felonies or constricting statutory parole standards). In addition, proposed expansions to the classification of felonies enacted last year by AB 109 (the 2011 Public Safety Realignment) which may be punishable in jail and not prison (Penal Code section 1170(h)) would be subject to ROCA because an offender's criminal record could make the offender ineligible for jail and therefore subject to state prison. Under these principles, ROCA has been applied as a contentneutral, provisional measure necessary to ensure that the Legislature does not erode progress towards reducing prison overcrowding by passing legislation which could increase the prison population. ROCA will continue until prison overcrowding is resolved.

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation. On June 30, 2005, in a class action lawsuit filed four years earlier, the United States District Court for the Northern District of California established a Receivership to take control of the delivery of medical services to all California state prisoners confined by the California Department of Corrections and Rehabilitation ("CDCR"). In December of 2006, plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a three-judge federal panel issued an order requiring California to reduce its immate population to 137.5 percent of design capacity -- a reduction at that time of roughly 40,000 immates -- within two years. The court stayed implementation of its ruling pending the state's appeal to the U.S. Supreme Court.

On May 23, 2011, the United States Supreme Court upheld the decision of the three-judge panel in its entirety, giving California two years from the date of its ruling to reduce its prison population to 137.5 percent of design capacity, subject to the right of the state to seek modifications in appropriate circumstances. Design capacity is the number of inmates a prison can house based on one inmate per cell, single-level bunks in dormitories, and no beds in places not designed for housing. Current design capacity in CDCR's 33 institutions is 79,650.

On January 6, 2012, CDCR announced that California had cut prison overcrowding by more than 11,000 inmates over the last six months, a reduction largely accomplished by the passage of Assembly Bill 109. Under the prisoner-reduction order, the immate population in California's 33 prisons must be no more than the following:

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## AG0125

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- 167 percent of design capacity by December 27, 2011 (133,016 inmates);
- 155 percent by June 27, 2012;
- 147 percent by December 27, 2012; and
- 137.5 percent by June 27, 2013.

This bill does not aggravate the prison overcrowding crisis described above under ROCA.

#### COMMENTS

## 1. Need for This Bill

According to the author:

AB 1527 makes it a misdemeanor for carrying an unloaded long gun in public, vehicle or street in incorporated communities in California and in unincorporated communities that meet certain criteria. The bill contains specific exemptions for law enforcement personnel as well as licensed hunters. It is a follow-up to AB 144 of last year that banned the open carry of handguns.

Open carry creates a potentially dangerous situation when police officers respond to calls from the public when confronted with someone carrying a rifle or shotgun. It's a bad situation for everyone – the police, the gun owner and innocent bystanders who could be injured by this risky behavior. In addition, it wastes time, money and attention when police have to roll-out and respond to these unnecessary calls.

If AB 1527 becomes law, violations are punishable by six months in county jail and a fine up to \$1,000. The measure is backed by the California Brady Campaign Against Gun Violence, PORAC-Peace Officers Research Association of California and the California Police Chiefs Association which refers to AB 1527 as "one of our most important bills in this session".

"This bill just makes sense. Sooner or later, somebody's going to get hurt. If you see somebody walking around a mall or main street with a shotgun, it's pretty intimidating. It's unnecessary and it is just going to lead to trouble. I had hoped that the earlier measure barning open carry of handguns would solve this problem but when long gun advocates attended a police fundraiser it became clear that there was more work to do. When law enforcement asks the legislature for help because of a public safety risk, we should help them.

Open carry advocates are now taking the opportunity to openly carry rifles and shotguns in urban areas of the state. Invariably, these demonstrations result in a call to the police or sheriff's departments to respond. This causes the waste of police time and assets besides causing an unnecessary risk to public safety. Attached are several articles that detail such incidences. In one case open carry advocated carried long guns to a city police department fund raiser.

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In a Redondo Beach protest in May, an open carry advocate was reported carrying a 12 gauge shotgun through the Redondo Beach pier and adjoining Veterans Park. In the attached photographs you can clearly see that at least 4, maybe 5 or more Redondo Police officers responded to this open carry. In a time when many city and county police and sheriff departments are facing severe budget cuts, our law enforcement agencies shouldn't be squandering scarce resources following open carry advocates around incorporated areas of the state.

#### 2. The Open-Carrying of Rifles and Shotguns in Public

In tesponse to the enactment of AB 144 (Portantino) -1 Chapter 725, Statutes of 2011, some gun rights advocates have shifted their focus to openly carrying rifles and shotguns in public places. This bill is intended to outlaw that practice. Last October the San Francisco Chronicle reported:

SAN LEANDRO -- Now that a new California law barning the open carrying of pistols is loaded for action, the big guns are coming out.

Rifles, that is. And shotguns.

Gun owners who are upset that the anti-carry state law will go into effect Jan. 1 intend to start packing their biggest heat in open as often and as visibly as they can, beginning with a gathering in San Leandro today.

They expect at least 50 gun-toting Second Amendment enthusiasts to show up on Hesperian Boulevard at Bayfair mall from noon to 1 p.m. From target-plinking .22-caliber rifles and .270-caliber deer-hunting weapons to 12-gauge shotguns that can blow a gaping hole in a wall - expect any or all long guns that are legal to own in California, organizers say.

The point is to be provocative enough to spur action by the courts or legislators to repeal the new law and restore the right to pack unloaded pistols in the open.

"People are really upset about this law, and if they won't let us carry handguns, we just have to defend ourselves with the next thing available," said co-organizer Yih Chau Chang of Dublin, who intends to bring his unloaded pump-action shotgun to today's rifle meet-up. "This just shows that here in California, our guncontrol laws have gotten out of control."

Gun opponents say this new tactic, which follows last year's open-carry displays of handguns by many of those now promoting rifles, is reprehensible.

There will be change, all right, they say - but not the kind the gun advocates want.

'Alarms the public'

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"Actually, this kind of event is an invitation to ban long rifles in public now," said Juliet Leftwich, legal director of Legal Community Against Violence, a guncontrol group founded in San Francisco in response to the 101 California St. massacre of 1993 in which nine people died.

#:1432

"Open carrying of any guns, pistols or rifles alarms the public and it wastes law enforcement resources while they have to monitor the people carrying them," Leftwich said. "It would be best if it were totally banned."

#### Motivation for tactic

The law spurring this new tactic is AB144, which Gov. Jerry Brown signed Oct. 10. Introduced in January right after the shooting in Tucson that left six dead and 13 wounded including Rep. Gabrielle Giffords, D-Ariz, the law forbids anyone from openly carrying handguns in public.

Previously, Californians could tote handguns any way they wished, in holsters or in their hands, as long as they were unloaded. Violation of the new law is a misdemeanor punishable by up to a year in prison.

California is the fifth state, including Florida and Texas, to outlaw openly carrying pistols. The District of Columbia also forbids it. Thirty-three states allow unrestricted open carry, and 12 require permits.

Gun advocates say the California law is doomed whenever a lawsuit gets filed and they say one will be - because two federal court rulings in the past year . asserted the legality of open-carry rights. The rulings upheld rejections of several individual concealed-weapons-permit applications in San Diego and Yolo. counties, saying the old open-carry law negated the need to pack a hidden gun.

Gun-control advocates say the gun-rights crowd shouldn't pin any hopes on those rulings.

They say the danger is too acute to play politics with, citing figures from the Brady Center to Prevent Gun Violence showing that America's annual toll of 30,000 gun-related deaths far outstrips those of any other Western country. Britain, for example, experiences about 50 gun-related deaths a year.

Seal Beach rampage cited

Gun advocates say those same statistics just prove their point.

"What you will see if you restrict people's gun rights is more of what happened in Seal Beach last week, where people don't have the right to defend themselves," said Jeff Dunhill, an open-carry organizer who spent this week hunting elk in Colorado. He was referring to a rampage in which eight people were shot to death

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at an Orange County beauty salon, allegedly by a man involved in a child-custody battle with one of the victims.

"They are arguing that patrons at the nail salon in Seal Beach should have had firearms with them?" said Leffwich. "That's crazy."

(Handgun Law Riles Activists - They'll Carry Rifles, San Francisco Chronicle, Saturday, October 22, 2011, http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/10/21/BAVU1LKGRM.DTL)

#### 3. Is Banning Open Carrying of Rifles and Shotguns Unconstitutional?

The Second Amendment to the United States Constitution states, "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed". (U.S. Const., Second Amend.) For many years, courts have wrestled with the question of whether the Second Amendment protects the individual's right to own a weapon. In *United States vs. Crutkshank* (1875) 92 U.S. 542, the Supreme Court held that the Second Amendment guaranteed states the right to maintain militias but did not guarantee to individuals the right to possess guns. Subsequently, in *United States vs. Miller* (1939), the Court upheld a federal law banning the interstate transportation of certain firearms. Miller, who had been arrested for transporting a double-barreled sawed-off shotgun from Oklahoma to Arkansas, claimed the law was a violation of the Second Amendment.

The Court rejected Miller's argument, stating:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. (United States v. Miller, 307 U.S. 174, 178 (1939).)

For many years following the Supreme Court's decision in United States vs. Miller, the orthodox opinion among academics and federal appeals courts alike was that the Second Amendment to the United States Constitution did not protect possession of firearms unrelated to service in the lawfully established militia. (Merkel, Parker v. District of Columbia and the Hollowness of the Originalist Claims to Principled Neutrality, 18 Geo. Mason U. Civil Right L. Journal, 251, 251.)

That changed in June 2008, when the United States Supreme Court ruled in *District of Columbia* vs. *Heller* that a District of Columbia complete ban on possession of a handgun in the home was an unconstitutional violation of the Second Amendment. (*District of Columbia v. Heller* (2008) 128 S. Ct. 2783, 2797.) After a lengthy discussion of the historical context and meaning of the Second Amendment, the Court stated:

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Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.' As we said in *United States v. Cruikshank* [citation omitted] '[ti]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed ..., "" (*Heller* at 2797.)

#### However, in the Heller decision, the Supreme Court also stated:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. n26

#### FOOTNOTES

n26 We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive. (*District of Columbia* v. *Heller*, 128 S. Ct. 2783, 2816-2817 (2008), citations omitted.)

Therefore, while the *Heller* decision established that the right to own a firearm is a personal right, not one limited to ownership while serving in a "well-regulated militia," it also held that the government may place reasonable restrictions on that right such as restricting "carrying firearms in sensitive places." It is not clear whether the Supreme Court would include in its list of lawful regulatory measures prohibiting the open carrying of unloaded rifles and shotguns in public.

IS A BAN ON OPEN CARRYING OF RIFLES AND SHOTGUNS IN PUBLIC CONSTITUTIONAL?

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ASSEMBLY THIRD READING AB 1527 (Portantino and Ammiano) As Amended April 10, 2012 Majority vote

#### PUBLIC SAFETY 4-2 APPROPRIATIONS 12-4

Ayes:	Ammiano,	Cedillo,	Mitchell,	Skinner		Ayes:	Fuentes, Blumenfield, Bradford, Charles Calderon, Campos, Davis, Gatto, Hall, Hill, Lara, Mitchell, Solorio
Nays:	Knight, Hay	gman	•	•	•	Nays:	Harkey, Donnelly, Nielsen, Norby, Wagner

<u>SUMMARY</u>: Makes it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county. Specifically, <u>this bill</u>:

- 1) Makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.
- States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 3) Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

4) Provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:

- a) By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property,
- b) When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances;
- c) If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a

## AG0132

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- q) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;
- r) Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- s) At any established public target range while the person is using that firearm upon the target range;
- t) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;

u) Complying with specified provisions of law relating to the regulation of firearms;

- v) Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training;
- w) Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon;
- x) Incident to and at the request of a sheriff or chief or other head of a municipal police department;
- y) If all of the following conditions are satisfied:
  - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
  - ii) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and,
  - iii) The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
- z) By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol;
- aa) By a person exempted from the prohibition against carrying a loaded frearm within the Governor's Mansion;
- bb) By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system;

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- cc) On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun;
- dd) The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit;
- ee) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning form the training;
- ff) By a person in compliance with specified provisions related to carrying a firearm in an airport; or,
- gg) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.
- 5) Exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.
- 6) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.
- 7) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in an airport.
- 8) Makes conforming technical changes.

FISCAL EFFECT: According to the Assembly Appropriations Committee, unknown, likely minor, non-state-reimbursable local law enforcement and incarceration costs, offset to a degree by increased fine revenue.

<u>COMMENTS</u>: According to the author, "AB 1527 is a modified version of AB 144 from last session. AB 1527 bans the open carrying of an unloaded firearm that is not a handgun in an incorporated city or city and county, with specific exceptions." The absence of a prohibition on 'open carry' of long guns has created an increase in problematic instances of these guns carried in public, alarming unsuspecting individuals causing issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the guin-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could

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be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls has placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

Please see the policy committee for a full discussion of this bill.

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

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<u>AB 1527</u> Page 1

#### Date of Hearing: April 18, 2012

#### ASSEMBLY COMMITTEE ON APPROPRIATIONS Felipe Fuentes, Chair

AB 1527 (Portantino) - As Amended: April 10, 2012

Policy Committee:Public SafetyVote:4-2Urgency:NoState Mandated Local Program: YesReimbursable:No

## <u>SUMMARY</u>

This bill makes it a misdemeanor, with a long list of exceptions, for a person to carry an unloaded gun that is not a handgun on his or her person (long-gun open-carry) outside a motor vehicle in an incorporated city or city and county. Specifically, this bill:

 Makes the misdemeanor punishable by up to six months and/or a fine of up to \$1,000, or by up to one year in county jail and/or a fine up to \$1,000 if the gun and unexpended ammunition capable of being fired from that gun are in the immediate possession of that person and the person is not in lawful possession of that gun.

2) Creates a lengthy series of exceptions to the long-gun open carry prohibition.

3) Makes a series of conforming changes.

FISCAL EFFECT

Unknown, likely minor, non-state-reimbursable local law enforcement and incarceration costs, offset to a degree by increased fine revenue.

#### COMMENTS

1) <u>Rationale</u>. The principle purpose of the bill is to follow up on the author's AB 144 (Statutes of 2011), which made public open-carry of handguns a misdemeanor, as specified, by expanding the prohibition to long-guns in incorporated cities.

According to the author, "The absence of a prohibition on 'open carry 'of long guns has created an increase in problematic instances of these guns carried in public, alarming unsuspecting individuals causing issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as well.

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"Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

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#### 2) <u>Current law.</u>

- a) Makes it a misdemeanor punishable by up to six months in county jail and/or a fine of up to \$1,000 to carry an exposed and unloaded handgun upon his or her person, or inside a vehicle, while in any public place or on any public street in an incorporated city, on any public street in a prohibited area of an unincorporated county, in any public place in a prohibited area of a city or county The penalty is up to one year in county jail and/or a fine of up to \$1,000 if the handgun and unexpended ammunition capable of being discharged from that frearm are in the immediate possession of the person and the person is not the registered owner of the gun.
- b) Makes it a felony or a misdemeanor, depending on the circumstances, to carry a loaded gun upon the person or in a vehicle while at any public or on any public street in an incorporated city or in any public place or in a prohibited area of an unincorporated territory.
- 3) <u>Support</u> According to the Peace Officers Research Association of California (PORAC), "The practice by individuals and organizations to "openly carry" frearms in public places in order to challenge law enforcement and frearm statutes in California is increasing in frequency. While PORAC understands that most of these open carry demonstrations are being done by law abiding citizens, it places law enforcement and the public in a precarious and possibly dangerous situation."
  - According to the California Chapter of the Brady Campaign to Prevent Gun Violence, "The California Brady Campaign Chapters oppose the open carry of long guns for the same reasons that we opposed the open carrying of handguns. We continue to believe that carrying exposed firearms in crowded public places with ammunition readily available is inappropriate and risky behavior that threatens public safety and strains law enforcement resources. The carrying of exposed rifles and shotguns in urban settings, such as shopping malls and restaurants, is particularly inappropriate and threatening."
  - <u>Opposition</u>. According to the National Rifle Association of America, "The defensive carrying of firearms in public is protected by the Second Amendment of the United States
     Constitution, which the U.S. Supreme Court has already stated protects the individual right to possess and carry weapons in case of confrontation.
    - "The extreme nature of this prohibition is illustrated in the bill itself, which follows the prohibition with dozens of exceptions, all of which merely reflect the fact that firearms are a normal and integral part of American culture and are handled or carried in a variety of perfectly innocent and legitimate context."

Analysis Prepared by: Geoff Long/ APPR. / (916) 319-2081

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Page ID

Date of Hearing: March 27, 2011 Chief Counsel:

Gregory Pagan

#### ASSEMBLY COMMITTEE ON PUBLIC SAFETY Tom Ammiano, Chair

AB 1527 (Portantino) - As Amended: March 7, 2012

SUMMARY: Makes it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county. Specifically, this bill:

- 1) Makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended annunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.
- 2) States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 3) Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 4) Provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:
  - a) By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property.
  - b) When the fitearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances.
  - c) If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified.

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- d) By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.
- e) By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.
- f) As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in frearms and who is licensed to engaged in that business or an authorized representative or agent of that business.
- g) By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- h) By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- i) By a licensed hunter while engaged in lawful hunting or while transporting that firearm while going to or returning from that hunting expedition.
- j) Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- k) By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- 1) Within a licensed gun show.
- m) Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority.
- n) When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- o) By any person while engaged in the act of making or attempting to make a lawful arrest.
- p) By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- q) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or

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while the participant or authorized employee or agent is at that production event.

- r) Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ).
- s) At any established public target range while the person is using that firearm upon the target range.
- t) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
  - u) Complying with specified provisions of law relating to the regulation of firearms.
  - v) Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training.
  - w) Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon.
  - x) Incident to and at the request of a sheriff or chief or other head of a municipal police department.
  - y) If all of the following conditions are satisfied:
    - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to find activities;
    - ii) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
    - iii) The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
  - z) By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
  - aa) By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion.
- bb) By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system.
- cc) On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.

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d) By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.

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- e) By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.
- f) As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business.
- g) By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- h) By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- i) By a licensed hunter while engaged in lawful hunting or while transporting that firearm while going to or returning from that hunting expedition.
- i) Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- k) By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- 1) Within a licensed gun show.
- m) Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority.
- n) When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- o) By any person while engaged in the act of making or attempting to make a lawful arrest.
- p) By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of frearms, or related to firearms training.
- q) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or

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while the participant or authorized employee or agent is at that production event.

- r) Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ).
- s) At any established public target range while the person is using that firearm upon the target range. '
- t) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
  - u) Complying with specified provisions of law relating to the regulation of frearms.
  - v) Incident to, and in the course and scope of training of or by an individual to become a sworn peace officer as part of a course of study approve by the Commission on Peace Officer Standards and Training.
  - w) Incident to, and in the course and scope of training of or by an individual to become licensed to carry a concealed weapon.
  - x) Incident to and at the request of a sheriff or chief or other head of a municipal police department.
  - y) If all of the following conditions are satisfied:
    - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
    - ii) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
    - iii) The unloaded firearm that is not a handgun is to be delivered by a licensed firearms. dealer,
  - z) By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
  - aa) By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion.
- bb) By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system.
- cc) On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.

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- dd) The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit.
- ee) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning form the training.
- ff) By a person in compliance with specified provisions related to carrying a firearm in an airport.
- gg) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.
- 5) Exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.
- 6) Recasts existing provisions of law that make it an offense for a person to carry a loaded firearm on his or her person or in a vehicle in a public place or a public street, public road, or public highway in an incorporated city, or on his or her person in a public place or on a public street in a prohibited area of an unincorporated territory, or in a vehicle while in a public place or on a public street, public road, or public highway in any part of an unincorporated area.
- 7) Expands the prohibition against carrying an exposed an unloaded handgun on his or her person outside a motor vehicle in public areas and public streets to include public roads and public highways in the areas a person is prohibited from carrying an exposed and unloaded handgun, as specified.
- 8) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.
- 9) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in an airport.
- 10) Authorizes a county board of supervisors to enact an ordinance that regulates the carrying of unloaded firearms that are not handguns outside of a vehicle in the unincorporated area of a county where the county has prohibited the discharge of firearms if the ordinance contains specified exemptions.
- 11) Makes conforming technical changes.

#### EXISTING LAW:

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- 1) Makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. [Penal Code Section 26350(a)(1).]
- 2) Makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and . imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm [Penal Code Section 26350(a)(2).]
- 3) Provides that a person is guilty of carrying a loaded firearm when the person carries a loaded firearm upon the person or in a vehicle while at any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of an unincorporated territory. [Penal Code Section 25850(a).]-

#### FISCAL EFFECT: Unknown

#### COMMENTS:

Author's Statement: According to the author, "AB 1577 is a modified version of AB 144 from last session. AB 1577 bans the open carrying of an unloaded firearm that is not a handgun in an incorporated city or city and county, with specific exceptions The absence of a prohibition on open carry of long guns has created an increase in problematic instances of these guns carried in public, alarming unsuspecting individuals causing issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in "open carry" calls has placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

- 2) <u>Comments</u>: This bill makes it a misdemeanor punishable by up to six months in the county jail to carry an unloaded rifle or shotgun in an incorporated city or city and county. Additionally, this bill contains 33 exemptions or exceptions that acknowledge the need to openly carry an unloaded rifle or shotgun in order to engage in otherwise legal activity, such as hunting and target shooting. What is the point of a prohibition that requires 33 exceptions?
- 3) Argument in Support: According to the California Chapter of the Brady Campaign to Prevent Gun Violence, 'Last year, AB 144, which prohibits the open carry of unloaded

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handguns was enacted and became operative on January 1, 2012. In response to this new law, the open carry proponents announced that they would openly carry long guns, which is still permitted under existing state law. The original open carry problem has now been escalated with the carrying of exposed long guns in crowded public places and in response, AB 1527 was introduced.

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"The California Brady Campaign Chapters oppose the open carry of long guns for the same reasons that we opposed the open carrying of handguns. We continue to believe that carrying exposed firearms in crowded public places with ammunition readily available is inappropriate and risky behavior that threatens public safety and strains law enforcement resources. The carrying of exposed rifles and shotguns in urban settings, such as shopping malls and restaurants, is particularly inappropriate and threatening.

"Those who carry exposed long guns in public are not required to undergo any special screening or clearance. In fact, there is no verification process to ensure that the person is not prohibited from possessing firearms. People who carry long guns in crowded public places may lack the skill, experience, judgment or moral character for safely carrying an exposed weapon, particularly when faced with a confrontational situation.

"The public display and flaunting of long guns in shopping malls and restaurants puts employees and customers at risk of an accidental or vigilante-type incident where innocent bystanders could get shot. A member of the public, when confronted by a person openly carrying a long gun, has no way of knowing the intentions of that person. Caution would dictate that the incident be reported to police. Police, in turn, must respond and assume that the firearm is loaded until determined otherwise. In this potentially life threatening situation, law enforcement may understandably take lethal action to protect the public and themselves from a perceived armed threat."

4) Argument in Opposition: According to the National Rifle Association of America, "In AB 1527, the proponents seek to ban the open carry of unloaded guns. The provisions are written without the basic comprehension of what an integral part of the open carrying and possession of long guns are in the numerous outdoor activities Californians enjoy.

"The defensive carrying of firearms in public is protected by the Second Amendment of the United States Constitution, which the U.S. Supreme Court has already stated protects 'the individual right to possess and carry weapons in case of confrontation'.

"The extreme nature of this prohibition is illustrated in the bill itself, which follows the prohibition with dozens of exceptions, all of which merely reflect the fact that firearms are a normal and integral part of American culture and are handled or carried in a variety of perfectly innocent and legitimate context."

#### REGISTERED SUPPORT / OPPOSITION:

#### Support

Peace Officers Research Association of California California Chapter of the Brady Campaign to Prevent Gun Violence

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### **Opposition**

- California Rifle and Pistol Association
- National Rifle Association of America
- National Association for Gun Rights
- California Right to Carry

## Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

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### LEGISLATIVE INFORMATION

#### AB-1527 Firearms. (2011-2012)

SECTION 1. Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

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(a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in a calendar month.

(b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.

(d) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) A collection agency or an employee thereof while acting within the scope of his or her employment; while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(h) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(i) A person engaged solely in the business of securing information about persons or property from public records.

(j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may

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not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(I) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) A savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(n) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately. authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

SEC. 2. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section 7574.01, and is employed exclusively and regularly by an employer who does not provide contract security services for other entitles or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include an instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, a dirk, dagger, pistol, revolver, or any other firearm, a knife having a blade longer than five inches, a razor with an unguarded blade, and a metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

Case 2:11-cv-09916-SOO SS Document 96-4 Filed 05/02/13 Page 78 of 87 Page ID #1452 (d) A charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and Impartial triai, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(I) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25405) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) A savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

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(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a). In the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(r) The changes made to this section by the act adding this subdivision during the 2005–06 Regular Session of the Legislature shall apply as follows:

(1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.

(2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

SEC. 3. Section 626.92 of the Penal Code is amended to read:

626.92. Section 626.9 does not apply to or affect any of the following:

(a) A security guard authorized to openly carry an unloaded handgun pursuant to Chapter 6 (commencing with Section 26350) of Division 5 of Title 4 of Part 6.

(b) An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to Section 26361.

(c) A security guard authorized to openly carry an unloaded firearm that is not a handgun pursuant to Chapter 7 (commencing with Section 26400) of Division 5 of Title 4 of Part 6.

(d) An honorably retired peace officer authorized to openly carry an unloaded firearm that is not a handgun pursuant to Section 26405.

SEC. 4. Section 16505 is added to the Penal Code, to read:

**16505.** For purposes of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, a firearm is "encased" when that firearm is enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of that firearm exposed.

SEC. 5. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

(1) Section 16550.

(2) Section 16730.

(3) Section 16960,

(4) Section 16990.

(5) Section 17070.

(6) Section 17310.

(7) Sections 26500 to 26588, inclusive.

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(8) Sections 26600 to 27140, inclusive.

(9) Sections 27400 to 28000, inclusive.

(10) Section.28100.

(11) Sections 28400 to 28415, inclusive.

(12) Sections 29010 to 29150, inclusive.

(13) Sections 29610 to 29750, inclusive.

(14) Sections 29800 to 29905, inclusive.

(15) Sections 30150 to 30165, inclusive.

(16) Section 31615.

(17) Sections 31705 to 31830, inclusive.

(18) Sections 34355 to 34370, inclusive,

(19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

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(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

(6) Sections 26035 to 26055, Inclusive,

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310.

(5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4,

(6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.

(7) Sections 26500 to 26588, inclusive,

(8) Sections 26700 to 26915, inclusive,

(9) Section 27510.

(10) Section 27530.

(11) Section 27540.

(12) Section 27545.

(13) Sections 27555 to 27570, inclusive.

(14) Sections 29010 to 29150, Inclusive.

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(e) As used in Sections 34005 and 34010, "firearm" does not i	nclude a destructive device.
(f) As used in Sections 17280 and 24680, "firearm" has the sa United States Code.	ame meaning as in Section 922 of Title 18 of the
(g) As used In Sections 29010 to 29150, inclusive, "firearm" weapon that can be readily converted to the functional condition	
SEC. 5.5. Section 16520 of the Penal Code is amended to read	1:
16520. (a) As used in this part, "firearm" means a device, de expelled through a barrel, a projectile by the force of an explo	
(b) As used in the following provisions, "firearm" includes the f	rame or receiver of the weapon:
(1) Section 16550.	
(2) Section 16730.	
(3) Section 16960.	
(4) Section 16990.	
(5) Section 17070.	
(6) Section 17310.	
(7) Sections 25250 to 25256, Inclusive,	
(7) (8) Sections 26500 to 26588, Inclusive.	
(9) Sections 26600 to 27140, inclusive.	
<del>(9)</del> (10) Sections 27400 to 28000, inclusive.	
<del>(10)</del> (11) Section 28100.	
(12) Sections 28400 to 28415, inclusive.	
(13) Sections 29010 to 29150, inclusive.	

(13) (14) Sections 29610 to 29750, inclusive.

(14) (15) Sections 29800 to 29905, inclusive.

(15) (16) Sections 30150 to 30165, inclusive.

(16) (17) Section 31615.

(17) (18) Sections 31705 to 31830, inclusive.

(18) (19) Sections 34355 to 34370, Inclusive.

(19) (20) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750,

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

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(6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

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(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310,

(5) Sections 25250 to 25256, inclusive.

(5) (6) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

(6) (7) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.

(7) (8) Sections 26500 to 26588, inclusive.

(8) (9) Sections 26700 to 26915, inclusive.

(9) (10) Section 27510.

(10) (11) Section 27530.

(11) (12) Section 27540.

(12) (13) Section 27545.

(13) (14) Sections 27555 to 27570, Inclusive.

(14) (15) Sections 29010 to 29150, inclusive.

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 6. Section 16750 of the Penal Code is amended to read;

16750. (a) As used in Section 25400, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

(b) As used in Article 2 (commencing with Section 25850), Article 3 (commencing with Section 25900), and Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4, Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, and Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully acquired and lawfully owns the firearm or has the permission of the lawful owner or person who otherwise has apparent authority to possess or have custody of the firearm. A person who has lawful custody of the firearm without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

SEC. 7. Section 16850 of the Penal Code is amended to read:

16850. As used in Sections 17740, 23925, 25105, 25205, and 25610, in Article 3 (commencing with Section 25505) of Chapter 2 of Division 5 of Title 4, in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, and in Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, "locked container" means a

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Case 2:11-cv-09916-SJO-SS Document 96-4 Filed 05/02/13 Page 83 of 87 Page ID secure container that is fully enclosed and locked by a<sup>#</sup>padiock, keylock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

SEC. 8. Section 17295 of the Penal Code is amended to read:

**17295.** (a) For purposes of Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

(b) For purposes of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, a firearm that is not a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

SEC. 9. Section 26366.5 is added to the Penal Code, to read:

26366.5. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

SEC. 10. Section 26390 is added to the Penal Code, to read:

26390. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun in any of the following circumstances:

(a) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(b) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(c) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying is conducted in accordance with the terms and conditions of the permit.

(d) The open carrying of an unloaded handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit Issued pursuant to Section 33300, if the carrying of that handgun is conducted In accordance with the terms and conditions of the permit.

SEC. 11. Section 26391 is added to the Penal Code, to read:

**26391.** Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when done in accordance with the provisions of subdivision (d) of Section 171.5.

SEC. 12. Chapter 7 (commencing with Section 26400) is added to Division 5 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 7. Carrying an Unloaded Firearm That is not a Handgun in an Incorporated City or City and County Article 1. Crime of Carrying an Unloaded Firearm that is not a Handgun in an Incorporated City or City and County 26400. (a) A person is guilty of carrying an unloaded firearm that is not a handgun in an Incorporated city or city and county when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while in the incorporated city or city and county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if the firearm and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not in lawful possession of that firearm.

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Case 2:11-cv-09916-S(O) SS Document 96-4 Filed 05/02(13) Page 84 of 87 Page ID (c) (1) Nothing In this section shall preclude prosecution tinder Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

(d) Notwithstanding the fact that the term "an unloaded firearm that is not a handgun" is used in this section, each individual firearm shall constitute a distinct and separate offense under this section.

#### Article 2, Exemptions

26405. Section 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances:

(a) By a person when done within a place of business, a place of residence, or on private property, if that person, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

(b) By a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

(c) When the firearm is either in a locked container or encased and it is being transported directly between places where a person is not prohibited from possessing that firearm and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(d) If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (a), the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(e) By a peace officer or an honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

(f) By a person to the extent that person may openly carry a loaded firearm that is not a handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

(g) As merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling; repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

(h) By a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

(i) By a member of a club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a firearm that is not a handgun at that target range.

(j) By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition.

(k) Incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

(I) By a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

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(m) Within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

(n) Within a school zone, as defined in Section 626.9, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.

(o) When in accordance with the provisions of Section 171b.

(p) By a person while engaged in the act of making or attempting to make a lawful arrest,

(q) By a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

(r) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

(s) Incident to obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 23910.

(t) At an established public target range while the person is using that firearm upon that target range.

(u) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

(v) Incident to any of the following;

(1) Complying with Section 27560 or 27565, as it pertains to that firearm.

(2) Section 28000, as it pertains to that firearm.

(3) Section 27850 or 31725; as it pertains to that firearm.

(4) Complying with Section 27870 or 27875, as it pertains to that firearm.

(5) Complying with Section 27915, 27920, or 27925, as it pertains to that firearm.

(w) Incident to, and in the course and scope of, training of, or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

(x) Incident to, and in the course and scope of, training of, or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

(y) Incident to and at the request of a sheriff, chief, or other head of a municipal police department.

(z) If all of the following conditions are satisfied:

(1) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(2) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(3) The unloaded firearm that is not a handgun is to be delivered by a person licensed pursuant to, and operating In accordance with, Sections 26700 to 26925, inclusive.

(aa) Pursuant to paragraph (3) of subdivision (b) of Section 171c.

(ab) Pursuant to Section 171d.

(ac) Pursuant to subparagraph (F) of paragraph (1) of subdivision (c) of Section 171.7.

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(ad) On publicly owned land, if the possession and use of unloaded firearm that is not a handgun is specifically permitted by the managing agency of the land and the person carrying that firearm is in lawful possession of that firearm.

(ae) By any of the following:

(1) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(2) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(3) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(4) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(af) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

(ag) Pursuant to the provisions of subdivision (d) of Section 171.5.

(ah) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while the firearm is being used in the lawful course and scope of the licensee's activities as a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and regulations issued pursuant thereto.

(al) On the navigable waters of this state that are held in public trust, if the possession and use of an unloaded firearm that is not a handgun is not prohibited by the managing agency thereof and the person carrying the firearm is in lawful possession of the firearm.

SEC. 13. Section 5.5 of this bill Incorporates amendments to Section 16520 of the Penal Code proposed by both this bill and Senate Bill 1366. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 16520 of the Penal Code, and (3) this bill is enacted after Senate Bill 1366. In which case Section 5 of this bill shall not become operative.

**SEC. 14.** No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or Infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

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1	LEGISLATIVE	INFORMATION

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Ca

AB-1527 Firearms. (2011-2012)

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• • •	
Bill Status	
Measure:	AB-1527 、
Lead Authors:	Portantino (A) , Ammiano (A)
Principal Coauthors:	
Coauthors:	
Topic:	/ Firearms,
31st Day in Print:	02/23/12
Title:	An act to amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and to amend Sections 626.92, 16520, 16750, 16850, and 17295 of, to add Sections 16505, 26366.5, 26390, and 26391 to, and to add Chapter 7 (commencing with Section 26400) to Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.
House Location:	Secretary of State
Chaptered Date:	09/28/12
Last Amended Date:	08/22/12
Type of Measure	
Inactive Bill - Chaptere	d
Majority Vote Required	1999 1999 1997 1997 1997 1997 1997 1997
Non-Appropriation	
Fiscal Committee	
State-Mandated Local	Program
Non-Urgency	
Non-Tax levy	
Last 5 History Actions	
Date	Action
09/28/12	Chaptered by Secretary of State - Chapter 700, Statutes of 2012.
09/28/12	Approved by the Governor.
09/13/12	Enrolled and presented to the Governor at 12:15 p.m.
08/29/12	Senate amendments concurred in, To Engrossing and Enrolling, (Ayes 47, Noes 31, Page 6503.),
08/29/12	Assembly Rule 77 suspended. (Page 6488.)
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1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California MARK R. BECKINGTON Supervising Deputy Attorney General JONATHAN M. EISENBERG Deputy Attorney General State Bar No. 184162 300 South Spring St., Ste. 1702 Los Angeles, CA 90013 Telephone: (213) 897-6505 Fax: (213) 897-1071 E-mail: jonathan.eisenberg@doj.ca.gov Attorneys for Defendant California Attorn General Kamala D. Harris	теу	
9	IN THE UNITED STAT	TES DISTRICT COURT	
10	FOR THE CENTRAL DIS	STRICT OF CALIFORNIA	
11	WESTERN	DIVISION	
12			
13	CHARLES NICHOLS,	CV-11-09916 SJO (SS)	
14	Plaintiff,	EVIDENTIARY OBJECTIONS TO	
15	<b>v.</b>	DECLARATION OF CHARLES NICHOLS	
16	EDMUND G. BROWN, JR., in his	Date: N/A	
17	official capacity as Governor of California, KAMALA D. HARRIS,	Time: N/A Courtroom: 23 – 3d Flr.	
18	Attorney General, in her official capacity as Attorney General of Colifornia, CITY OF PEDONDO	Judge: Hon. Suzanne Segal Trial Date: Not Set	
19	California, CITY OF REDONDO BEACH, CITY OF REDONDO BEACH POLICE DEPARTMENT	Action Filed: Nov. 30, 2011	
20	BEACH POLICE DEPARTMENT, CITY OF REDONDO BEACH POLICE CHIEF JOSEPH		
21	LEONARDI and DOES 1 to 10,		
22	Defendants.		
23	<b></b>		
24	Defendant Kamala D. Harris, Attorn	ey General of the State of California (the	
25	"Attorney General"), submits the following	g objections to the Declaration of Charles	
26	Nichols in Support of Plaintiff's Motion for a Preliminary Injunction, filed on April		
27	10, 2013.		
28			
	1		

1			
2	OBJECTIONABLE TESTIMONY	GROUNDS FOR OBJECTION	COURT'S RULING
3 4 5 6	Nichols Decl., ¶ 2, page 2, lines 11-12. "I am not prohibited under Federal or California law from receiving or possessing firearms."	<ul> <li>□ Lack of foundation and personal knowledge. Fed. R. Evid. 602.</li> <li>□ Improper legal opinion. Fed. R. Evid. 701.</li> </ul>	□ Sustained □ Overruled
7 8 9 10	¶ 3, page 2, lines 14-15. "I have violated the laws at issue in the past and have articulated a concrete plan to violate them in the future."	<ul> <li>□ Lack of foundation and personal knowledge. Fed. R. Evid. 602.</li> <li>□ Improper legal opinion. Fed. R. Evid. 701.</li> <li>□ Relevance. Fed. R. Evid. 401.</li> </ul>	□ Sustained □ Overruled
<ol> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	¶ 4, page 2, lines 17-25. "I am presently being prosecuted for openly carrying a firearm in violation of a City of Redondo Beach municipal ordinance even though I was openly carrying the firearm in the beach zone of the city which is exempt from the ordinance (all coastal parklands are exempt by the city's own municipal ordinances) and despite the findings of Magistrate Judge Suzanne Segal and Federal District Court Judge Samuel James Otero that the State of California had preempted local regulations concerning the carrying of firearms. According to the City Attorney whose City Prosecutor reports to him, the city's ban applies to all weapons in all public places of the city."	<ul> <li>Lack of foundation and personal knowledge. (§§ 403, 702.)</li> <li>Improper legal opinion. Fed. R. Evid. 701.</li> <li>Relevance. Fed. R. Evid. 401.</li> <li>Hearsay. Fed. R. Evid. 802.</li> </ul>	Sustained Overruled
23 24 25 26 27 28	¶ 5, pages 2-3, lines 27-28, 1-4. "On October 24, 2012 California Superior Court Judge David Sotelo denied my demurrer to the criminal charge stating 'Given the uniqueness of the City of Redondo Beach as (sic) beach community immediately west of cities such	<ul> <li>Relevance. Fed. R. Evid. 401.</li> <li>Hearsay. Fed. R. Evid. 802.</li> </ul>	□ Sustained □ Overruled

1 2	OBJECTIONABLE TESTIMONY	GROUNDS FOR OBJECTION	COURT'S RULING
3	as Los Angeles, Compton and Carson, its' (sic) parks on the Pacific Ocean shoreline draw		
4 5	visitors not just (sic) these cities but every county, city and neighborhood.""		
	neighborhood.		
6	¶ 6, page 3, lines 6-12.	□ Lack of foundation and personal knowledge. (§§ 403, 702.)	□ Sustained
7	"The black population of the City of Redondo Beach is 2.8%.	□ Relevance. Fed. R. Evid. 401.	
8	Only 25.9% of Compton is white. Only 23.8% of Carson is	🗆 Hearsay. Fed. R. Evid. 802.	Overruled
9	white. The portions of the City of Los Angeles immediate east		
10	of Redondo Beach are similarly predominantly minority. The		
11	Cities of Torrance and Lomita which were not mentioned by		
12	Judge Sotelo are also immediately to the east of the		
13	City of Redondo Beach. Torrance has a black population		
14	of 2.7%. Lomita has a black population of 5.3%. These		
15	figures were obtained from the U.S. Census website reflecting		
16	the 2010 Census."		
17	¶ 7, page 2, lines 14-23.	□ Relevance. Fed. R. Evid. 401.	□ Sustained
18	"On May 21, 2011 I was stopped against my will by	□ Hearsay. Fed. R. Evid. 802.	
19	Redondo Beach police officers who took my long gun against my clear and vocal refusal to		Overruled
20	consent to the search. Redondo		
21	Beach Police Officer Todd Heywood performed a 'chamber		
22	check' to see if the firearm was unloaded pursuant to California		
23	Penal Code section 25850 and then subsequently confiscated		
24	my firearm carrying case, padlock and key thereby		
25	depriving me of my only means of self-defense even though the		
26	City of Redondo Beach has been aware since at least		
27	December 6, 2011 that I have a documented death threat against		
28	me. The unloaded firearm was		
		2	

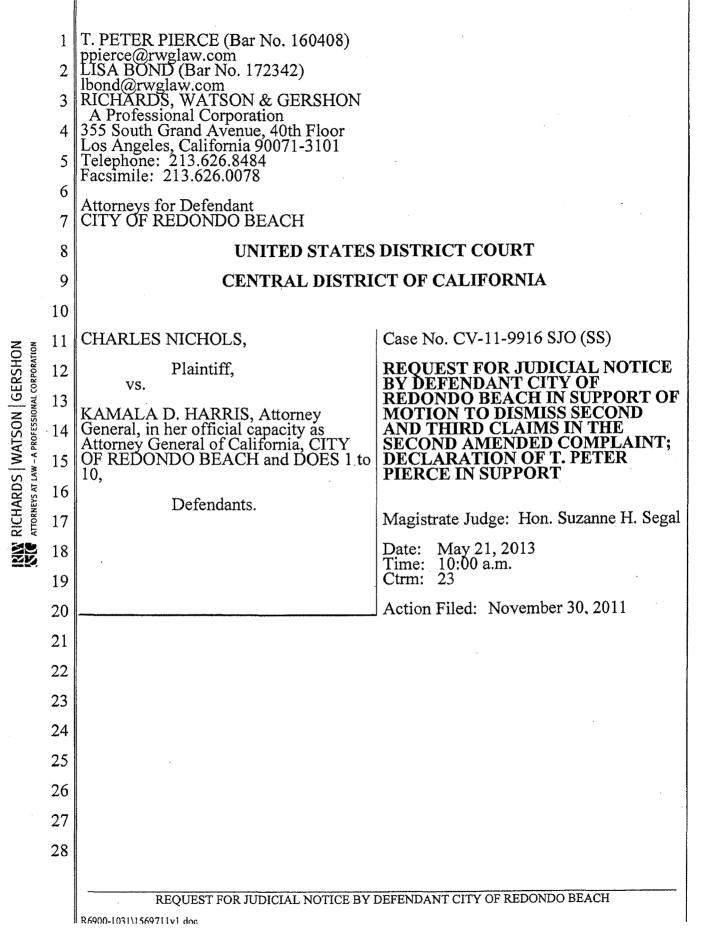
3

1 2	OBJECTIONABLE TESTIMONY	GROUNDS FOR OBJECTION	COURT'S RULING
- 3 4	also seized during the course of a peaceful protest. The protest was coordinated with the Redondo Beach City Attorney		
5	and Police Chief in advance."		
6	¶ 8, pages 3-4, lines 27-28,1-2. I sustained a severe back injury	□ Relevance. Fed. R. Evid. 401. □ Improper legal opinion. Fed. R.	Sustained
7	in a riding accident in August of 2002 leaving me partially	Evid. 701.	Overruled
8	disabled. I am not physically able to defend myself other than		
9	with a firearm. Current California law prevents me		
10	from openly carrying a firearm in case of confrontation for the		
11	purpose of self-defense. This includes self-defense with a		
12	less-lethal Taser which California defines as a 'firearm.'''		
13			
14	¶ 9, page 4, lines 4-8.	□ Relevance. Fed. R. Evid. 401.	Sustained
15 16	"This leaves under California law the only means of self- defense; a knife openly carried.	□ Improper legal opinion. Fed. R. Evid. 701.	Overruled
17	However, some California cities such as the City of Redondo Beach and the City of Los		
18	Beach and the City of Los Angeles have made it a crime to openly carry a knife which		
19	leaves me completely defenseless in those		
20	communities even if I were physically able to defend myself		
21	with a knife."		- -
22	¶ 10, page 4, lines 10-13.	□ Relevance. Fed. R. Evid. 401.	□ Sustained
23	"California law prohibits the issuance of licenses to openly	□ Improper legal opinion. Fed. R. Evid. 701.	
24	carry a handgun to counties with a population of fewer than	· · · · · · · · · · · · · · · · · · ·	Overruled
25	200,000 people. These licenses are only theoretically available		
26 27	to residents of those counties and are only valid within the county within which they are issued."		
28			
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Case 2;11-cv-09916-SJO-SS Document 96-5 Filed 05/02/13 Page 5 of 6 Page ID #:1466

1 2	OBJECTIONABLE TESTIMONY	GROUNDS FOR OBJECTION	COURT'S RULING
3 4 5 6 7	¶ 11, page 4, lines 20-22. "I asked for an application and license to openly carry a loaded handgun from the Redondo Beach police chief who denied my request citing California Penal Code section 26155 through his then attorney, the City Attorney for Redondo Beach."	<ul> <li>Relevance. Fed. R. Evid. 401.</li> <li>Hearsay. Fed. R. Evid. 802.</li> </ul>	□ Sustained □ Overruled
8 9 10 11 12	¶ 12, page 4, lines 20-22. "My public defender has stated in open court that he cannot provide me with a competent defense. The presiding judge, 'Chet' Taylor did not replace my public defender."	<ul> <li>Relevance. Fed. R. Evid. 401.</li> <li>Hearsay. Fed. R. Evid. 802.</li> </ul>	□ Sustained □ Overruled
.3 .4 .5 .6 .7 .8	¶ 13, page 4, lines 24-27. The only motion to dismiss the criminal case against me filed by my public defender referenced but a single sentence from Assembly Bill 1527, a 15- page bill which made it a crime to openly carry an unloaded long gun in incorporated cities. The motion is based on state preemption."	<ul> <li>Relevance. Fed. R. Evid. 401.</li> <li>Hearsay. Fed. R. Evid. 802.</li> </ul>	□ Sustained Overruled
.9 20 21 22 23 24 25	¶ 14, page 5, lines 1-4. "The sections of the California Penal code alone regulating the possession, use and carrying of weapons is over 200 pages long. Given that the municipal ordnance I am being charged with violating bans all weapons, a proper preemption motion would have been significantly longer."	<ul> <li>Lack of foundation and personal knowledge. Fed. R. Evid. 602.</li> <li>Improper legal opinion. Fed. R. Evid. 701.</li> <li>Relevance. Fed. R. Evid. 401.</li> </ul>	□ Sustained □ Overruled
26 27 28	¶ 15, page 5, lines 6-13. "My public defender has thus far refused to file a motion based on the First and Second Amendments to the US	<ul> <li>□ Lack of foundation and personal knowledge. Fed. R. Evid. 602.</li> <li>□ Improper legal opinion. Fed. R. Evid. 701.</li> </ul>	Sustained Overruled

			-
1 2	OBJECTIONABLE TESTIMONY	GROUNDS FOR OBJECTION	COURT'S RULING
3	Constitution saying that he and his office (the Los Angeles	□ Relevance. Fed. R. Evid. 401.	
4	County Public Defenders Office) does not believe that the	□ Hearsay. Fed. R. Evid. 802.	
5	Second Amendment is a fundamental right despite the		
6	U.S. Supreme Court, Federal Courts and California's own		
7	state courts saying that the Second Amendment is a Sundamental right. And despite		
8	fundamental right. And despite the fact that prior to the Heller decision, the California		
9	Supreme court had recognized		
10	the carrying of firearms as a fundamental right, albeit one subject to rational review, since		
11	1924."		
12	¶ 16, page 5, lines 15-17.	□ Lack of foundation and personal knowledge. Fed. R. Evid. 602.	□ Sustained
13 14	"My own personal experience has proven that California	□ Relevance. Fed. R. Evid. 401.	Overruled
14 15	police, prosecutors and judges do not obey their own laws. I cannot receive a fair trial. My		Overruled
15 16	only recourse is through the Federal courts."		
17	¶ 17, page 5, lines 19-20.	□ Lack of foundation and personal knowledge. Fed. R. Evid. 602.	□ Sustained
18		□ Lack of authentication. Fed. R.	
19		Evid. 901.	Overruled
20	Dated: May 2, 2013	Respectfully submitted,	
21 22		KAMALA D. HARRIS Attorney General of Califo	rnia
22		Attorney General of Califo MARK R. BECKINGTON Supervising Deputy Attorn	ey General
23			-
25		<u>/s/ Jonathan M. Eisenberg</u> Jonathan M. Eisenberg	
26		Deputy Attorney General Attorneys for Defendant Co Attorney General Kamala	alifornia
27		Attorney General Kamala I	D. Harris
28			
		6	



## **REQUEST FOR JUDICIAL NOTICE**

Defendant City of Redondo Beach (City) requests that the Court take judicial
notice of the October 24, 2012 ruling ("Demurrer Denied") of the Superior Court of
the State of California, County of Los Angeles, Southwest Judicial District, in Case
No. 2SY05163, captioned "People of the State of California v. Charles Nichols". A
true and correct certified copy of the ruling is attached hereto as Exhibit A.
Declaration of T. Peter Pierce at ¶ 2.

9 Federal courts may "take notice of proceedings in other courts, both within
10 and without the federal judicial system, if those proceedings have a direct relation to
11 the matters at issue." U.S. ex rel Robinson Rancheria Citizens Council v. Borneo,
12 Inc., 971 F.2d 244, 248 (9th Cir. 1992); see also Fed. R. Evid. 201. The attached
13 ruling from a proceeding before the California Superior Court is "directly related" to
14 this case because it reveals the defenses plaintiff has raised in state court.

Dated: May 7, 2013

RICHARDS | WATSON | GERSHON ATTORNEYS AT LAW - A FROFESSIONAL CORPORATION

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RICHARDS, WATSON & GERSHON A Professional Corporation T. PETER PIERCE LISA BOND

By:

T. PETER PIERCE Attorneys for Defendant CITY OF REDONDO BEACH

REQUEST FOR JUDICIAL NOTICE BY DEFENDANT CITY OF REDONDO BEACH

R6900-1031\1569711v1 doc

## **DECLARATION OF T. PETER PIERCE**

I, T. Peter Pierce, declare:

RICHARDS | WATSON | GERSHON ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

I am attorney licensed to practice before this Court and all courts of the
 State of California. I am a member of the law firm of Richards, Watson & Gershon,
 counsel of record for defendant City of Redondo Beach and I am one of the attorneys
 in that firm primarily responsible for representing the City in this case. I have
 personal knowledge of the matter set forth below.

8 2. Attached here as Exhibit "A" is a true and correct certified copy of a ruling
9 I obtained from the files of the Superior Court of the State of California, for the
10 County of Los Angeles, on May 6, 2013.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 7, 2013

REQUEST FOR JUDICIAL NOTICE BY DEFENDANT CITY OF REDONDO BEACH

R6900-1031\1569711v1 doc

## Case 2:11-cv-09916-SJO-SS Document 98 Filed 05/07/13 Page 4 of 7 Page ID #:1491

# **EXHIBIT A**

## SUPERIOR COURT OF THE STATE OF CALIFRONIA

FOR THE COUNTY OF LOS ANGELES

LOS ANGELES SUPERIOR COURT

OCT 2 4 2012

Case No. 2SY05163

DEMURRER DENIED

PEOPLE OF THE STATE C	F CALIFORNIA,	)
	Plaintiff,	)
v.		)
		)
CHARLES NICHOLS,		)
	Defendant	)
		_)

The City of Redondo Beach ordinance that prohibits a person from carrying a **firearm** "in or into" a Redondo Beach "city park" (R.B.M.C. 4-35.20) is unambiguous and the filed criminal complaint clearly gives defendant Charles Nichols adequate notice of the public offense charged, and that he must defend. The complaint complies with California Penal Code sections 950 and 952. Defendant definitely knows what a firearm is (he staged this event and video-taped himself carrying a shotgun, including his citation by police officers) and he should know what a City of Redondo Beach park is (he selected Veterans Park at the City of Redondo Beach pier and boardwalk for his news-file presentation.). The Motion for Demurrer denied.

Defendant has not met his burden of demonstrating that California general law has preempted the entire field of firearms regulation. "A conflict exists if the local legislation duplicates, contradicts, or enters an area occupied by general law, either expressly or by legislative implication." <u>Great Western Shows, Inc. v. County of Los</u>

e 2:11-cv-09916-SJO

<u>Angeles</u>. Local legislation is duplicative of general law when it is coextensive therewith; is contradictory when it is inimical to it; local law enters the area that is fully occupied when the legislature has expressly shown intent

to fully occupy the area or has impliedly done so. Since there is no bar to prosecution based on preemption the Motion for Demurrer is denied.

Even though the Second Amendment protects the general right to carry a gun in public, the United States Supreme Court has not recognized that right as stated therein, holding instead—even recently--that the "right secured by the Second Amendment is not unlimited." <u>District of Columbia</u> v. <u>Heller</u> (2008) 554 U.S. 570 The <u>Heller</u> court emphasized that "nothing in [its'] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in <u>sensitive places</u> such as schools and government buildings, . . ." Id. at 627 (emphasis added).

Because the prohibition of carrying a firearm "in or into" a Redondo Beach City park is not a substantial burden on defendant's right to bear arms to defend his hearth, home or self, there is no Second Amendment violation. If there ever was a "sensitive place" that the City of Redondo Beach is permitted to regulate the carrying of firearms--it is its' city parks. Given the uniqueness of the City of Redondo Beach as beach community immediately west of Cities such as Los Angeles, Compton and Carson, its' parks on the Pacific Ocean shoreline draw visitors not just these cities but every county, city and neighborhood inland. There is no Second Amendment violation and the Demurrer is denied.

October 24, 2012

HE CRIGINAL RECORD IN MY CUSTODY 11577 へいへ dge David Sotelo JOHN A. CLARKE, CLERK SUPERIOR COURT, TORRANCE JUDICIAL DISTRICT LOS ANGELES, STATE OF CALIFORNIA

Y THAT THIS IS A THUE, CORRECT, AND COMPLETE

	1	PROOF OF SERVICE
	2	
	3	I, Clotilde Bigornia, declare:
	4 5	I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On May 7, 2013, I served the
	6	within document(s) described as:
	7	REQUEST FOR JUDICIAL NOTICE BY DEFENDANT CITY OF REDONDO BEACH IN SUPPORT OF MOTION TO DISMISS SECOND AND THIRD CLAIMS IN THE SECOND AMENDED
	8	COMPLAINT; DECLARATION OF T. PETER PIERCE IN SUPPORT
	9	on the interested parties in this action as stated below:
	10	on the interested parties in this action as stated below.
	11	Charles Nichols P.O. Box 1302
WATSON GERSHON - A PROFESSIONAL CORPORATION	12	Redondo Beach, CA 90278 Tel: (424) 634-7381
N GF	13	Jonathan Michael Eisenberg
<b>TSOI</b> ROFESS	14	Office of the California Attorney General Government Law Section
W/A	15	300 South Spring Street, Suite 1702 Los Angeles, CA 90013
RICHARDS   WATSON   GERSHON attorneys at law - a professional corporation	16	Tel: (213) 897-6505 Fax: (213) 897-1071
RICH	17	Email: ionathan.eisenberg@doi.ca.gov
NIX NU	18	[X] (BY MAIL) By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth above. I am readily familiar with the firm's
	19	practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with
	20	the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party
	21 22	served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this
	22 23	affidavit.
	23 24	I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.
	25	Executed on May 7, 2013, at Los Angeles, California.
•	26	I declare under penalty of perjury that the foregoing is true and correct.
	27	CAR
	28	Clotilde Bigornia
		R6900-1031\1549017v1.doc

0	ase 2:11-cv-09916-SJO-SS Document 107	Filed 06/12/13 Page 1 of 7 Page ID #:1758
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8	UNITED STATE	S DISTRICT COURT
9	CENTRAL DIST	RICT OF CALIFORNIA
10		
11	CHARLES NICHOLS,	NO. CV 11-9916 SJO (SS)
12	Plaintiff,	SCHEDULING ORDER
13	v.	
14	KAMALA D. HARRIS, et al.,	
15	Defendant.	
16		
17		
18		and pretrial motions. The Court will
19		proceedings related to the Pretrial
20 21		the expiration of the discovery and
21	motion cut-off dates provided in	this order.
22	1. <u>Discovery and Discovery</u>	/ Cut-Off Date
24		
25	All discovery shall be comp	leted on or before October 31, 2013.
26		ufficient time in advance of this cut-
27		be due, in the normal course, prior to
28	_	-off. No discovery may be taken after

#### ase 2:11-cv-09916-SJO-SS Document 107 Filed 06/12/13 Page 2 of 7 Page ID #:1759

1 that date without the prior approval of the Court. Approval will be 2 granted only in exceptional circumstances and upon a showing of good 3 cause.

5 Discovery taken by oral deposition is complete when questioning Discovery taken by written request (deposition upon written 6 ceases. 7 questions, interrogatories, requests for production of documents and things, and requests for admission) is complete upon the date when the 8 written response to the request is due, pursuant to the Federal Rules of 9 10 Civil Procedure. All depositions of a party shall be scheduled to commence at least fourteen (14) calendar days after service of the 11 Notice of Deposition and at least seven (7) court days before the 12 13 discovery cut-off date. The cut-off date for discovery motions is the same deadline as the discovery cut-off date. 14

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Except as otherwise specifically provided in this Order, discovery is governed by the Federal Rules of Civil Procedure and applicable Local Civil Rules of the Court. <u>Pro se</u> litigants are entitled to discovery to the same extent as are litigants represented by counsel. The Court may, however, order a complete or partial stay of discovery in appropriate circumstances, including where a defense of qualified immunity is raised.

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# 2. <u>Motions and Motion Cut-Off Dates</u>

All discovery motions shall be filed and served on or before October 31, 2013. All other motions, including but not limited to motions for summary judgment, shall be filed and served on or before

2

1 November 13, 2013. If all parties are represented by counsel, or if a 2 party proceeding pro se is not in custody, the briefing schedule 3 provided in Local Civil Rule 7 shall apply, unless otherwise ordered by the Court. The moving party shall set the hearing date for Tuesday at 4 5 10:00 a.m. in Courtroom 23 no earlier than thirty-five (35) days from the date the motion is served. If any party to the action is in custody 6 7 and proceeding pro se, no hearing date shall be set, any opposition to the motion shall be served and filed not later than fourteen (14) days 8 after service of the motion, and any reply shall be filed not later than 9 seven (7) days after service of the opposition, unless otherwise ordered 10 by the Court. Such motions shall be deemed submitted for decision on 11 the basis of the papers timely filed and without oral argument unless 12 otherwise ordered by the Court. Failure to timely file an opposition to 13 a motion may be deemed by the Court to constitute the non-moving party's 14 15 consent to the granting of the relief sought, pursuant to Local Civil 16 Rule 7-12.

17

18 THE FACT THAT A MOTION TO DISMISS OR MOTION FOR SUMMARY JUDGMENT 19 IS PENDING BEFORE THE COURT DOES NOT STAY DISCOVERY OR RESULT IN AN 20 AUTOMATIC CONTINUANCE OF ANY OF THE DATES SET IN THIS ORDER. THE 21 PARTIES ARE ADVISED THAT THEY ARE TO PROCEED WITH DISCOVERY AND ALL 22 OTHER MATTERS PERTAINING TO THE CASE WHILE A MOTION IS PENDING BEFORE 23 THE COURT. REQUESTS FOR CONTINUANCES OF THE DISCOVERY CUT-OFF DATES OR MOTION CUT-OFF DATES WILL BE STRONGLY DISFAVORED IF IT IS CLEAR TO THE 24 25 COURT THAT THE PARTIES DID NOT PROCEED TO PROSECUTE OR DEFEND THE CASE WITH DILIGENCE. 26

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dase 2:11-cv-09916-SJO-SS Document 107 Filed 06/12/13 Page 4 of 7 Page ID #:1761

In the event Defendants file a summary judgment motion, the Court advises all parties, including Plaintiff, to read and become familiar with Rule 56. This Order includes notice to Plaintiff of the meaning and consequences of summary judgment pursuant to <u>Rand v. Rowland</u>, 154 5 F.3d 952, 957-58 (9th Cir. 1998).

6

7 Generally, summary judgment must be granted when there is no genuine issue of material fact -- that is, if there is no real dispute 8 9 about any fact that would affect the result of the case, the party who asked for summary judgment is entitled to judgment as a matter of law, 10 11 which will end the case. To oppose a Motion for Summary Judgment, Plaintiff cannot simply rely on what his Complaint states. Instead, 12 Plaintiff's Opposition must set out specific facts in declarations, 13 depositions, answers to interrogatories, or authenticated documents, as 14 15 provided in Rule 56(e), that contradict the facts shown in Defendant's supporting declarations and evidence and demonstrate that there is a 16 17 genuine issue of material fact for trial. If summary judgment is granted, Plaintiff's case will be dismissed and there will be no trial. 18

19

20 Plaintiff is expressly advised that he has the right to submit 21 counter-declarations and any other responsive evidentiary materials to 22 oppose a Motion for Summary Judgment. Plaintiff is further advised that 23 if he fails to rebut Defendant's version of the facts with counterdeclarations or other evidence, the Court may accept Defendant's version 24 25 of the facts as true, and the claims against Defendant may be dismissed without a trial. All declarations must be signed under penalty of 26 27 perjury by persons having personal knowledge of the facts stated in the declarations. 28

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dase 2:11-cv-09916-SJO-SS Document 107 Filed 06/12/13 Page 5 of 7 Page ID #:1762 Deadline For Amending Pleadings or Adding Parties 1 3. 2 The deadline for amending pleadings and/or adding parties is June 3 28, 2013. No further amendments will be permitted after that date 4 5 without a showing of good cause. 6 7 4. Status Report 8 9 Each party shall file and serve a Status Report on or before August 12, 2013. The Status Report shall contain the following information: 10 11 A description of the principal legal and factual issues raised 12 Α. 13 in this case; 14 15 в. A summary of the discovery conducted in this case to date and 16 of the status of discovery, including any pending or 17 anticipated discovery disputes and discovery motions, and a summary of any discovery remaining to be completed; 18 19 20 С. A brief description of any motions remaining to be made and 21 their anticipated filing date(s); if defendant[s] do not 22 intend to file a dispositive motion, defendant[s] shall inform 23 the Court; 24 25 The number of anticipated percipient and expert witnesses D. 26 anticipated to testify at trial; 27 28 Ε. An estimate of the time likely to be required for trial; 5

dase 2:11-cv-09916-SJO-SS Document 107 Filed 06/12/13 Page 6 of 7 Page ID #:1763 1 2 F. A statement as to whether trial by jury is desired and has 3 been properly requested; 4 A discussion of the likelihood of settlement and a statement 5 G. of whether settlement discussions have taken place or are 6 7 scheduled; and 8 9 Any other special factors applicable to the progress of this Η. 10 case. 11 5. Compliance with Federal Rules of Civil Procedure and Local 12 13 Rules of Court 14 All parties must comply with the Federal Rules of Civil Procedure 15 and the Local Civil Rules of the Court, unless otherwise ordered by the 16 17 Court. All counsel, and unrepresented parties whether or not in custody, are bound by Federal Rule of Civil Procedure 11. 18 19 20 If a plaintiff is in custody and proceeding pro se, compliance with 21 the following Local Civil Rules is not required, unless otherwise 22 ordered by the Court: Rule 7-3; Rule 7-14; Rule 7-15; Rule 16-2 (only 23 to the extent that it requires the parties to meet in person); Rule 16-6 24 (only to the extent that it requires plaintiff to prepare and lodge the 25 Pretrial Conference Order; defendants shall prepare and lodge the 26 Pretrial Conference Order); Rule 26-1; Rule 37-1; Rule 37-2; Rule 37-3; 27 and Rule 65-1 (only to the extent that it requires motions for temporary restraining orders or preliminary injunctions to be set for hearing). 28 6

þ	ase 2:11-cv-09916-SJO-SS Document 107 Filed 06/12/13 Page 7 of 7 Page ID #:1764
1	Plaintiff must keep the Court advised of his or her current address at
2	all times. Failure to comply with any of the provisions of this Order
3	may result in a recommendation that this action be dismissed with
4	prejudice.
5	
6	IT IS SO ORDERED.
7	
8	DATED: June 12, 2013
9	SUZANNE H. SEGAL
10	SUZANNE H. SEGAL UNITED STATES MAGISTRATE JUDGE
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·	Case 2:11-cv-09916-SJO-SS Document	t 115 Filed 07/12/13 Page 1 of 3 Page ID #:1798 FILED
1 2 3 4 5 6 7	Charles Nichols PO Box 1302 Redondo Beach, CA 90278 Voice: (424) 634-7381 E-Mail: CharlesNichols@Pykrete.info In Pro Per	2013 JUL 12 PM 2:05 CLEANTELOS
8	United State	es District Court
9	Central Dist	rict of California
10		
11	Charles Nichols,	) Case No.: CV-11-9916 SJO (SS)
12	PLAINTIFF,	PLAINTIFF'S NOTICE OF
13	vs.	) POTENTIAL PARTIAL ) MOOTNESS AGAINST ) DEFENDANT CITY OF REDONDO
14	KAMALA D. HARRIS, Attorney	BEACH
15	General, in her official capacity as	
16	Attorney General of California, CITY	
17	OF REDONDO BEACH and DOES 1	
18	to 10,	Date: TBD Time: TBD
19	Defendants.	) Location: United States Courthouse
20	-	Los Angeles, CA 90012-4701 Courtroom: 1 - 2nd Floor
21		<ul> <li>312 North Spring Street</li> <li>Los Angeles, CA 90012-4701</li> <li>Courtroom: 1 - 2nd Floor</li> <li>Judge: Samuel James Otero</li> <li>Date Action Filed: November 30, 2011</li> </ul>
22		
23		
24 25		
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		1 <u>TIAL PARTIAL MOOTNESS AGAINST</u> OF REDONDO BEACH

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*	Case 2:11-cv-09916-SJO-SS Document 115 Filed 07/12/13 Page 2 of 3 Page ID # 1799		
1	Plaintiff respectively requests that this Court take notice that on July 11,		
2	2013 Defendant City of Redondo Beach returned Plaintiff's:		
3	Single shot Harrington & Richardson breech loading shotgun;		
4	Sling;		
5	Carrying case;		
6	Padlock;		
7	Key.		
8			
9	Plaintiff's operative Complaint (SAC) (Docket #83) on page 39, item "O" of		
10	the Prayer for Relief asks "Compel the immediate return of PLAINTIFF'S		
11	property."		
12			
13	This potentially moots only item "O" of Plaintiff's SAC.		
14			
15	· · · · · · · · · · · · · · · · · · ·		
16			
17			
18			
19			
20	Respectfully submitted this 12 <sup>th</sup> Day of July, 2013.		
21	Al No.		
22	By: Charles Nichols		
23 24	PLAINTIFF in Pro Per		
25	PO Box 1302 Redondo Beach, CA 90278		
26	Voice: (424) 634-7381		
27	Email: CharlesNichols@Pykrete.info		
28			
	2 PLAINTIFF'S NOTICE OF POTENTIAL PARTIAL MOOTNESS AGAINST		
	DEFENDANT CITY OF REDONDO BEACH		

#### Case 2:11-cv-09916-SJO-SS Document 115 Filed 07/12/13 Page 3 of 3 Page ID #:1800 CERTIFICATE OF SERVICE

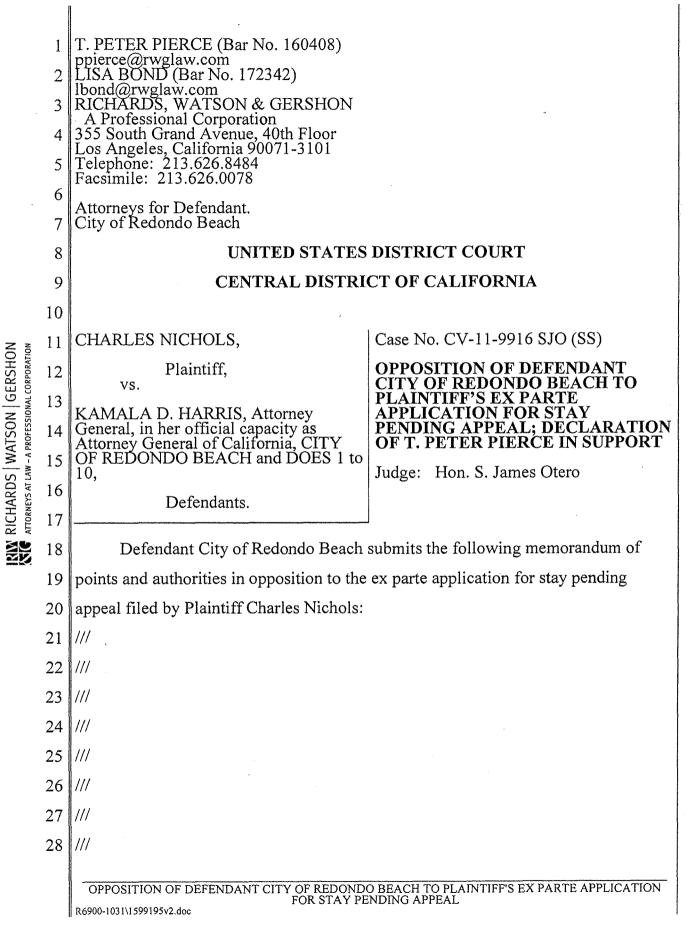
I hereby certify that a true and correct copy of PLAINTIFF'S NOTICE OF POTENTIAL PARTIAL MOOTNESS AGAINST DEFENDANT CITY OF REDONDO BEACH was served via United States Mail, postage prepaid, on this 12th, day of July, 2013; on the following:

KAMALA D. HARRIS Attorney General of California JONATHAN M. EISENBERG Deputy Attorney General State Bar No. 184162 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 Attorneys for Defendant California Attorney General Kamala Harris

AND

THOMAS PETER PIERCE LISA MARIE BOND Richards Watson and Gershon 355 S Grand Avenue 40th Floor Los Angeles, CA 90071-3101 Attorneys for Defendant: CITY OF REDONDO BEACH

Charles Nichols Plaintiff, In Pro Per Case No. CV-11-9916 SJO (SS)



### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### I. Preliminary Statement

4 Defendant City of Redondo Beach (the "City") opposes on the following
5 grounds the ex parte application for a stay pending appeal filed by Plaintiff Charles
6 Nichols ("plaintiff"):

First, plaintiff has not provided an adequate explanation as to why he cannotseek a stay through a noticed motion.

9 Second, plaintiff cannot show that he would be prejudiced by the noticed 10 motion procedure; his request for a stay has no merit in the first place. Plaintiff appeals from an order denying a preliminary injunction with respect to enforcement 11 12 of three California statutes. Plaintiff did not seek a preliminary injunction with 13 respect to enforcement of the City's prohibition on firearms in public parks. The 14 constitutional validity of California's statutes is an issue entirely separate from the 15 validity of the City's regulation. This Court may continue to exercise jurisdiction over plaintiff's claims against the City without concern for running afoul of any 16 17 decision of the Ninth Circuit with respect to enforcement of California law.

Third, still pending before the Court is the City's Motion to Dismiss all of the claims asserted against it in the operative Second Amended Complaint. A stay of the proceedings would prejudice the City by depriving it of the opportunity to have its legal defenses adjudicated now, and would leave the City in legal limbo for the duration of the stay.

Fourth, well after the City filed its Motion to Dismiss, plaintiff pled no contest
to a misdemeanor criminal complaint filed against him in California state court
arising from the same course of conduct underlying his claims against the City here.
After researching the potential impact of that plea on plaintiff's claims here, the City
has concluded that it has additional grounds to move for judgment against plaintiff.
The City is drafting a detailed Rule 7-3 pre-meeting letter to plaintiff in an effort to

OPPOSITION OF DEFENDANT CITY OF REDONDO BEACH TO PLAINTIFF'S EX PARTE APPLICATION FOR STAY PENDING APPEAL R6900-1031/1599195v2.doc

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convince him to dismiss his claims against the City in the wake of his plea in state
 court. A stay by this Court would further prejudice the City by depriving it of an
 opportunity to obtain a resolution on the merits now.

In summary, the City's continued efforts to obtain a favorable judgment
should not be derailed by an appeal that has nothing to do with plaintiff's claims
against the City.

8 II. The Ex Parte Application Should Be Denied Because Plaintiff Has Not
 9 Adequately Explained Why A Noticed Motion Would Be Ineffective.

10 The Court's Initial Standing Order advises: "Ex parte applications are 11 discouraged. Mission Power Eng'g Co. v. Cont'l Casualty Co., 883 F.Supp. 488 (C.D.Cal. 1995) [Mission Power]." (Standing Order, p. 12, lines 1-2). "Many ex 12 parte motions are denied, not because the underlying request is unwarranted, but 13 14 because the papers do not show that bypassing the regular noticed motion procedure 15 is necessary." Mission Power, 883 F.Supp. at 492. Plaintiff has not explained why 16 his request for a stay cannot be accommodated through a regularly noticed motion. 17 There is no reason why plaintiff cannot file a noticed motion and set it for hearing in 18 advance of the September 4 deadline for the filing of the answering brief in the Ninth 19 Circuit, which will be months in advance of the Ninth Circuit deciding the appeal. 20 The ex parte application should be denied for this reason alone.

- 21
- III. The Ex Parte Application Should Be Denied Because Plaintiff Has Not
   Shown Irreparable Prejudice.

Plaintiff must show (1) he "will be irreparably prejudiced if the underlying
motion is heard according to regular noticed motion procedures"; and (2) he "is
without fault in creating the crisis that requires ex parte relief." *Mission Power*, 883
F.Supp. at 492. Plaintiff fails to satisfy the first factor, rendering superfluous any
discussion of the second.

OPPOSITION OF DEFENDANT CITY OF REDONDO BEACH TO PLAINTIFF'S EX PARTE APPLICATION FOR STAY PENDING APPEAL R6900-1031\1599195v2.doc

1 "To show irreparable prejudice, it will usually be necessary to refer to the 2 merits of the accompanying proposed motion, because if it is meritless, failure to hear it cannot be prejudicial." Mission Power, 883 F.Supp. at p. 492. Plaintiff 3 contends that this Court, by continuing to assert jurisdiction over plaintiff's claims 4 against the City, could interfere with the Ninth Circuit's jurisdiction over plaintiff's 5 pending appeal. Plaintiff is mistaken. This Court refused to enjoin enforcement of 6 7 California statutes on the ground that plaintiff was not likely to succeed on his *facial* 8 challenges to those statutes under the Second, Fourth and Fourteenth Amendments. 9 (See Order, Document 109, at pp. 4-10). The statutes, collectively, prohibit the 10 carrying of loaded and unloaded firearms, including handguns, in public places. The 11 facial validity of those statutes has nothing to do with plaintiff's as-applied 12 challenges to the City's regulation under the Second, Fourth and Fourteenth Amendments. (See Second Amended Complaint, Document 83, at ¶¶ 45, 70-82). 13 14 The City criminally prosecuted plaintiff for violating the City's prohibition on 15 firearms in public parks. (See Exhibit "A" attached, Declaration of T. Peter Pierce at 16 ¶ 2; See also Second Amended Complaint, Document 83, at ¶ 45). Plaintiff has not shown that the validity of the City's enforcement will be affected by the Ninth 17 Circuit's decision on the facial validity of California law. 18

19 To the extent plaintiff tries to state a facial Second Amendment claim against the City, he does not show that this Court, by retaining jurisdiction over that claim, 20 21 would interfere with the Ninth Circuit's jurisdiction. Nor could he show that. A 22 ruling by this Court upholding the City's regulation under the Second Amendment 23 would not interfere with a Ninth Circuit ruling striking down one of the challenged California statutes on that ground. More importantly, for the reasons stated in this 24 Court's order denying a preliminary injunction, it is highly unlikely that the Ninth 25 Circuit would invalidate any of the state statutes. 26

Separately and independently, plaintiff recently pled no contest in California
state court to violating the City's prohibition on firearms in public parks. (See

-3-OPPOSITION OF DEFENDANT CITY OF REDONDO BEACH TO PLAINTIFF'S EX PARTE APPLICATION FOR STAY PENDING APPEAL R6900-1031\1599195y2.doc

Exhibit "B" attached at p. 7; Pierce decl. at ¶ 3). Accordingly, he was found guilty of 1 2 the misdemeanor charge, and convicted. (See Exhibit "B" attached at pp. 7-8; Pierce 3 decl. at ¶ 3). The City is preparing a letter to plaintiff, under Local Rule 7-3, explaining that plaintiff's conviction forecloses his claims against the City under 4 5 Heck v. Humphrey, 512 U.S. 477, 486-87, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), 6 and its progeny. Plaintiff's claims against the City are now foreclosed regardless of 7 the Ninth Circuit's decision in the pending appeal involving California law. Unless 8 plaintiff agrees to dismiss his claims against the City in the Rule 7-3 process, the City soon will be filing a motion for judgment on the pleadings or for summary 9 judgment. The pending appeal should not derail that motion. 10

RICHARDS | WATSON | GERSHON ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION 12 13 14 15 16 17 18 19 20

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IV. Conclusion

For all of the foregoing reasons, the Court should deny plaintiff's ex parte application.

Dated: July 16, 2013

RICHARDS, WATSON & GERSHON Professional Corporation PETER PIERCE LISA BOND

By: PETER PIFR Attorneys for Defendant City of Redondo Beach

OPPOSITION OF DEFENDANT CITY OF REDONDO BEACH TO PLAINTIFF'S EX PARTE APPLICATION FOR STAY PENDING APPEAL R6900-1031\1599195v2.doc

### **DECLARATION OF T. PETER PIERCE**

I, T. Peter Pierce, declare:

I am an attorney admitted to practice before this Court and licensed to
 practice in all courts of the State of California. I am one of the attorneys responsible
 for representing defendant City of Redondo Beach in this case. I have personal
 knowledge of the matters in this declaration.

7 2. Attached here as Exhibit "A" is a true and correct certified copy of the
8 operative charging complaint filed in *People v. Charles Nichols*, which I obtained
9 from the California Superior Court.

3. Attached here as Exhibit "B" is a true and correct certified copy of the
 complete docket sheet in *People v. Charles Nichols*, which I obtained from the
 California Superior Court. I have drawn a box around the parts of the docket sheet
 on pages 7 and 8 recounting Mr. Nichols' plea of no contest, the California Superior
 Court's finding of guilt, and its conviction of Mr. Nichols.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 16, 2013 at Los Angeles, California.

T. Peter Pierce

OPPOSITION OF DEFENDANT CITY OF REDONDO BEACH TO PLAINTIFF'S EX PARTE APPLICATION FOR STAY PENDING APPEAL R6900-1031/1599195v2.doc

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# EXHIBIT A

Case 2:11-cv-09916-SJO-SS Document 119 Filed	07/16/13 Page 8 of 18 Page ID #:1820
SUPERIOR COURT OF THE S	
COUNTY OF LOS ANGELES, SOUT	
PEOPLE OF THE STATE OF CALIFORNIA	COURT CASE # 2SY05163 $\Box$
PLAINTIFF COMPL	AINT - MISDEMEANOR/ L'S AFLICES SUPERIOR CO
V.	INFRACTION MAY 1 0 2013
DEFENDANT CHARLES ERWIN NICHOLS	" AMENDED COMPLAINT"
16810 HAWTHORNE BLVD.	"MODIFY WORDING IN CTI"
LAWNDALE, CA 90260	SY M. MILLIGAN, DEPUTY
DOB 03-12-60 SEX M HAIR BRO EYES BI	LU HGT 5'2" WGT 250 RACE W
OPR LIC # N6978836 ST CA	LPD/DR 12-3245
MAIN NUMBER	SOC SEC
VEH LIC ST ARRESTED CHGS 4-35.20(a) RBMC	CII M91667305 FBI
BKG NUMBER CITE # FOR LE	
DATE OF ARREST MAY 21, 2012	VIO CITY REDONDO BEACH
AKA FIRST MID L	AST SFX
FROT WID L	
The undersigned declarant and complainant states that he is int	
<ul> <li>and belief declares that on or about MAY 21, 2012 the above r</li> <li>District in the County of Los Angeles, State of California, com</li> </ul>	
District in the County of Los Angeles, State of Camolina, com	annou are ennie(s) or.

### COUNT 1

A misdemeanor violation of the **Redondo Beach Municipal Code Section 4-35.20(a)**, in that the above named Defendant did carry a weapon across, in, or into a park.

I declare under penalty of perjury that the foregoing is true and correct. Executed on MAY 09, 2013 in the County of Los Angeles, State of California

Declarant and Complainant

DK/ DA/BM

Investigating Agency: Redondo Beach Police Department THIS VERIFIED COMPLAINT INCORPORATES BY REFERENCE THE POLICE REPORT DR # 12-3245 B# FOR LETTER

PURSUANT TO PENAL CODE SECTION 1054.3 THE PEOPLE HEREBY MAKE AN INFORMAL REQUEST FOR DISCOVERY TO BE DISCLOSED BY THE DEFENDANT AND HIS/HER ATTORNEY TO THE PEOPLE WITHIN 15 DAYS OF THE RECEIPT OF THIS COMPLAINT,

# **EXHIBIT B**

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SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES NO. 25705163 PAGE NO. 1 vs. CURRENT DATE 07/15/13 THE PEOPLE OF THE STATE OF CALIFORNIA DEFENDANT 01: CHARLES ERWIN NICHOLS LAW ENFORCEMENT AGENCY EFFECTING ARREST: REDONDO BEACH POLICE DEPT. BAIL: APPEARANCE AMOUNT DATE RECEIPT OR SURETY COMPANY REGISTER DATE OF BAIL POSTED BOND NO. NUMBER CASE FILED ON 07/13/12. COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING COMMITTED, ON OR ABOUT 05/21/12 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING OFFENSE(S) OF: COUNT 01: 4-35.20(A) RBM MISD NEXT SCHEDULED EVENT: DIST TORRANCE COURTHOUSE DEPT 005 07/25/12 830 AM ARRAIGNMENT ON 07/25/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR ARRAIGNMENT. PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK) CELIA BERNAL (REP) SYDNE S. MICHEL (CP) 1 -DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY MICHAEL F SISSON PRIVATE ... COUNSEL DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY SIMICHAEL F SISSON PRIVATE COUNSEL DEMURRER TO COMPLAINT FILED BY THE CITY OF REDONDO BEACH FILED. WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: · 08/22/12 830 AM ARRAIGNMENT AND PLEA DIST TORRANCE COURTHOUSE DEPT 005 OUSTODY STATUS: RELEASED ON OWN RECOGNIZANCE 49 Y ON 08/17/12 AT 830 AM : DEFENDANT CHARLES NICOLS DEMURRER TO COMPLAINT. COURT ORDERS AND FINDINGS: O -THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE. NEXT SCHEDULED EVENT: 900 AM MOTION DIST TORRANCE COURTHOUSE DEPT 005 08/22/12 CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE.  $\sim$ ON 08/22/12 AT 900 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR MOTION PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK) CELIA BERNAL (REP) SYDNE S. MICHEL () DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY MICHAEL F SISSON PRIVATE COUNSEL DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY MICHAEL F SISSON PRIVATE COUNSEL MOTION CONTINUED UNTIL 09/13/2012. WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: 09/13/12 830 AM ARRAIGNMENT AND PLEA DIST TORRANCE COURTHOUSE DEPT 005 53 2.1

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Case 2:11-cv-09916-SJO-SS Document 119 Filed 07/16/13 Page 11 of 18 Page ID #:1823 3.0 , 2 25 CASE NO. 25Y05163 PAGE NO. 2 DATE PRINTED 07/15/13 DEF NO. 01 4.14 SUSTODY STATUS: RELEASED ON OWN RECOGNIZANCE ON 09/13/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR ARRAIGNMENT AND PLEA PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK) CELIA BERNAL (REP) SYDNE S. (REP) SYDNE S. MICHEL (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MICHAEL F SISSON PRIVATE COUNSEL - COURT ORDERS AND FINDINGS: -THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE. WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: 830 AM ARRAIGNMENT AND PLEA DIST TORRANCE COURTHOUSE DEPT 005 09/27/12 CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE 3 ON 09/27/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR ARRAIGNMENT AND PLEA PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK) CELIA BERNAL (REP) SYDNE S. MICHEL (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MICHAEL F SISSON PRIVATE COUNSEL CASE IS TAKEN UNDER SUBMISSION. RULING ON MOTION IS CONTINUED. COURT ORDERS AND FINDINGS: -THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE. WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: 10/24/12 830 AM MOTION DIST TORRANCE COURTHOUSE DEPT 005 CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE ÷4 ON 10/24/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR MOTION PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK) CELIA BERNAL (REP) SYDNE S. MICHEL (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MICHAEL F SISSON PRIVATE COUNSEL DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 4-35.20(A) RBM. COURT ORDERS AND FINDINGS: SU-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE. DEMURRER IS DENIED. WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: 12/11/12 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005 CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE ON 11/07/12 AT 800 AM : PAYMENT OF \$1.50 RECEIVED FOR PHOTOCOPIES. Ċ ŵ 3 2 فالمعاد فيأور سؤر Sec. 4

Case 2:11-cv-09916-SJO-SS Document 119 Aled 07/16/13 Page 12 of 18 Page ID #:1824 , Ά. CASE NO. 25Y05163 PAGE NO. 3 DEF NO. 01 DATE PRINTED 07/15/13 RECEIPT # SBA468645008 MATTER REMAINS ON CALENDAR FOR PRETRIAL HEARING DUE ON 12/11/12 DEPT. 5. PRETRIAL HEARING ON 12/11/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR PRETRIAL HEARING PARTIES: CHET L. TAYLOR (JUDGE) SHIRLEY LINARES (CLERK) (REP) SYDNE S. MICHEL (CP) WILLIAM BARNES DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MICHAEL F SISSON PRIVATE COUNSEL WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: 01/14/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005 DAY 00 OF 30 CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE e. QN: 01/14/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR PRETRIAL HEARING PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) WILLIAM BARNES (REP) SYDNE S. MICHEL (CP) SUBLIC DEFENDER APPOINTED. JOHN MATTINGLY - P.D. DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER ATTORNEY MICHAEL SISSON IS RELIEVED. NOTICE OF ASSESSMENT OF APPOINTED COUNSEL REGISTRATION FEE PER 987.5 SIGNED AND FILED WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: 02/25/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005 DAY 00 OF 30 ÷., CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE ON 01/30/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 13 CASE CALLED FOR FURTHER PROCEEDINGS PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) WILLIAM BARNES (REP) SYDNE S. MICHEL (CP) DEFENDANT IS NOT PRÉSENT IN COURT, BUT REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER ORDER TO PREPARE TRANSCRIPT SIGNED. NEXT SCHEDULED EVENT: 02/25/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005 ٠÷. ON 02/25/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR PRETRIAL HEARING

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Case 2:11-cv-09916-SJO-SS Document 119 Filed 07/16/13 Page 13 of 18 Page ID #:1825 4 N. M CASE NO. 25Y05163 PAGE NO. 4 DEF NO. 01 DATE PRINTED 07/15/13 PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) WILLIAM BARNES (REP) SYDNE S. MICHEL (CP) SEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: 03/18/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005 DAY 00 OF 30 CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE ON 03/18/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR PRETRIAL HEARING FARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) (REP) MELANIE CHAVIRA WILLIAM BARNES (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC . DEFENDER OPPOSITION TO DEFENSE MOTION TO CONTINUE FILED. DEFENSE MOTION FOR CONTINUANCE DENIED WITHOUT PREJUDICE. NEXT SCHEDULED EVENT:  $\wp$  04/03/13  $\,$  830 AM  $\,$  pretrial hearing  $\,$  dist torrance courthouse dept 005  $\,$ DAY 15 OF 30 GUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE  $-f^{(1)}$ ON 04/03/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR PRETRIAL HEARING PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) CARMEN J. GARROD (REP) MELANIE CHAVIRA (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER NEXT SCHEDULED EVENT: 04/16/13 830 AM TRIAL/OR MOTION DIST TORRANCE COURTHOUSE DEPT 005 DAY 28 OF 30 NEXT SCHEDULED EVENT: BY STIPULATION CAUSE CONTINUED TO 04/18/13 830 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005 DAY 30 OF 30 · 4. GN 04/05/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR TRIAL/OR MOTION PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) (REP) SYDNE S. MICHEL (CP) WILLIAM BARNES DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER 9 4/16/13 AND 4/18/13 DATES ARE VACATED. COURT ORDERS AND FINDINGS:  $\mathbb{Q}^n$  -THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE. WAIVES STATUTORY TIME. NEXT SCHEDULED EVENT: -7 1. 4 Ű Laber States States

Case 2:11-cv-09916-SJO-SS Document 119 Filed 07/16/13 Page 14 of 18 Page ID #:1826 Ε. CASE NO. 2SY05163 PAGE NO. 5 DEF NO. 01 DATE PRINTED 07/15/13 SUPON MOTION OF DEFENDANT DIST TORRANCE COURTHOUSE DEPT 005 04/30/13 830 AM JURY TRIAL DAY 00 OF 10 ON 04/11/13 AT 1000 AM IN TORRANCE COURTHOUSE DEPT REU CASE CALLED FOR 987.8 - ATTORNEY FEES PAYMENT PARTIES: NONE (JUDGE) NONE (CLERK) NONE (REP) MELANIE CHAVIRA () DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL PAYMENT RECEIVED FROM GC SERVICES FOR THE OUTSTANDING APPOINTED COUNSEL REGISTRATION FEE IN THE AMOUNT OF \$50.00 ON INVOICE #04132161. NEXT SCHEDULED EVENT: PROCEEDINGS TERMINATED ON 04/30/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 NUNC PRO TUNC ORDER PREPARED. IT APPEARING TO THE COURT THAT THE MINUTE ORDER DIN THE ABOVE ENTITLED ACTION DOES NOT PROPERLY REFLECT THE COURT'S ORDER. SAID MINUTE ORDER IS AMENDED NUNC PRO TUNC AS OF THAT DATE. ALL OTHER ORDERS ARE TO REMAIN IN FULL FORCE AND EFFECT. DETAILS LISTED AT END OF THIS MINUTE ORDER. CASE CALLED FOR JURY TRIAL PARTIES: CHET L. TAYLOR (JUDGE) VIKKI JOHNSON (CLERK) WILLIAM BARNES (REP) MELANIE CHAVIRA (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER PEOPLE'S OPPOSITION TO MOTION TO DISMISS FILED AND SET FOR 3 04-30-13 IN DEPT. 5. MOTION TO DISMISS AND MARSDEN CONTINUED TO 05-03-13 IN DEPT. 5. - . X NE\*\*\*\*\*NO NUNC PRO TUNC ORDER REQUIRED\*\*\*\*\* NEXT SCHEDULED EVENT: 05/03/13 830 AM MOTION DIST TORRANCE COURTHOUSE DEPT 005 DAY 03 OF 10 CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE Sec. 1 ON 05/03/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR MOTION PARTIES: CHET L. TAYLOR (JUDGE) VIKKI JOHNSON (CLERK) WILLIAM BARNES (REP) MELANIE CHAVIRA (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER OUT OF THE PRESENCE OF THE PEOPLE, WITH THE COURT STAFF ONLY, THE DEFENDANT'S MARSDEN MOTION IS HEARD AND DENIED. THE COURT ORDERS THE NOTES OF THE REPORTER SEALED AND NOT TO BE TRANSCRIBED UNLESS ORDERED BY THE COURT. DEFENDANT'S MOTION TO DISMISS IS ARGUED AND DENIED. . . . . . . 3 5 an an an Anna an Anna. Bar an Anna an le chalaiste sa na hinili antar an and the second states

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PAGE NO. CASE NO. 2SY05163 б DATE PRINTED 07/15/13 DEF NO. 01 THIS MATTER IS CONTINUED FOR JURY TRIAL TO 05/08/2013. COURT ORDERS AND FINDINGS: -THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE. NEXT SCHEDULED EVENT: 05/08/13 830 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005 DAY 08 OF 10 CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE ON 05/06/13 AT 800 AM : PAYMENT OF \$25.00 RECEIVED FOR CERTIFICATION. RECEIPT # SBA468645008. MATTER REMAINS ON CALENDAR FOR JURY TRIAL DUE ON 5/8/13 DEPT. 5. JURY TRIAL ON 05/08/13 AT 800 AM : \$25.00 PAID FOR CERTIFICATION. RECEIPT#SBA500815010. JURY TRIAL ON 05/08/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 CASE CALLED FOR JURY TRIAL PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) WILLIAM BARNES (REP) MELANIE CHAVIRA (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER COURT ORDERS AND FINDINGS: .- THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE. NEXT SCHEDULED EVENT: 05/10/13 830 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005 DAY 08 OF 10 GUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE ON 05/10/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005 - 2 NUNC PRO TUNC ORDER PREPARED. IT APPEARING TO THE COURT THAT THE MINUTE ORDER IN THE ABOVE ENTITLED ACTION DOES NOT PROPERLY REFLECT THE COURT'S ORDER. SAID MINUTE ORDER IS AMENDED NUNC PRO TUNC AS OF THAT DATE. ALL OTHER ORDERS ARE TO REMAIN IN FULL FORCE AND EFFECT. DETAILS LISTED AT END OF THIS MINUTE ORDER. CASE CALLED FOR JURY TRIAL PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) CHRISTINE CHEATHAM (REP) MELANIE CHAVIRA (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER MATTER IS CALLED FOR JURY TRIAL. DEFENDANT'S MOTION TO DISMISS BECAUSE PROSECUTION VIOLATES  $\therefore$  RIGHT GUARANTEED BY THE BILL OF RIGHTS IS HEARD, ARGUED AND ۰. 1. er inderskalder og som Allekter att skiller att som 

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CASE NO. 25Y05163 DEF NO. 01 PAGE NO. 7 DATE PRINTED 07/15/13

DENIED.

DEFENDANT'S MOTION TO CONTINUE IS DENIED.

A PANEL OF 30 PROSPECTIVE JURORS IS BROUGHT INTO THE COURTROOM AND IS GIVEN THE PERJURY ADMONISHMENT REGARDING QUALIFICATIONS.

VOIR DIRE COMMENCES.

THE JURORS ARE ADMONISHED, EXCUSED, AND ORDERED TO RETURN ON MAY 13, 2013 AT 11:00 A.M.

TRIAL IS RECESSED TO THE DATE AND TIME SHOWN BELOW. COURT ORDERS AND FINDINGS: -THE INITIAL JURY PANEL IS ADMONISHED.

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE. NEXT SCHEDULED EVENT:

0/05/13/13 1100 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 05/13/13 AT 1100 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR JURY TRIAL

WARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK) CARMEN J. GARROD (REP) MELANIE CHAVIRA

CARMEN J. GARROD (REP) MELANIE CHAVIRA (CP) DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER

DEFENDANT ADVISED OF AND PERSONALLY AND EXPLICITLY WAIVES THE FOLLOWING RIGHTS: WRITTEN ADVISEMENT OF RIGHTS AND WAIVERS FILED, INCORPORATED BY REFERENCE HEREIN

TRIAL BY COURT AND TRIAL BY JURY

CONFRONTATION AND CROSS-EXAMINATION OF WITNESSES;

SUBPOENA OF WITNESSES INTO COURT TO TESTIFY IN YOUR DEFENSE,

AGAINST SELF-INCRIMINATION; DEFENDANT ADVISED OF THE FOLLOWING:

THE NATURE OF THE CHARGES AGAINST HIM, THE ELEMENTS OF THE OFFENSE IN THE

COMPLAINT, AND POSSIBLE DEFENSES TO SUCH CHARGES;

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THE POSSIBLE CONSEQUENCES OF A PLEA OF GUILTY OR NOLO CONTENDERE, INCLUDING THE MAXIMUM PENALTY AND ADMINISTRATIVE SANCTIONS AND THE POSSIBLE LEGAL EFFECTS AND MAXIMUM PENALTIES INCIDENT TO SUBSEQUENT CONVICTIONS FOR THE SAME OR SIMILAR OFFENSES;

THE EFFECTS OF PROBATION; IF YOU ARE NOT A CITIZEN, YOU ARE HEREBY ADVISED THAT A CONVICTION OF THE OFFENSE FOR WHICH YOU HAVE BEEN CHARGED WILL HAVE THE CONSEQUENCES OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.

THE COURT FINDS THAT EACH SUCH WAIVER IS KNOWINGLY, UNDERSTANDINGLY, AND EXPLICITLY MADE; COUNSEL JOINS IN THE WAIVERS

THE DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT 01 AND PLEADS NOLO CONTENDERE WITH THE APPROVAL OF THE COURT TO A VIOLATION OF SECTION 4 4-35.20(A) RBM IN COUNT 01. THE COURT FINDS THE DEFENDANT GUILTY.

ارد. مراجع میشوند از ماند میشود اندازی

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CASE NO. 25Y05163	PAGE NO. 8	
DEF NO. 01	DATE PRINTED 07/15/13	
COUNT (01) : DISPOSITION: CONVICTED		
COURT ACCEPTS PLEA		
PEOPLE VS. WEST. EXT SCHEDULED EVENT:		
SENTENCING DEFENDANT WAIVES ARRAIGNMENT FOR JUDGMENT AND S		
WHY SENTENCE SHOULD NOT BE PRONOUNCED. THE COUL		
JUDGMENT: As to count (01):		
IMPOSITION OF SENTENCE SUSPENDED		
DEFENDANT PLACED ON SUMMARY PROBATION FOR A PERIOD OF 003 YEARS UNDER THE FOLLOWING ?	FERMS AND CONDITIONS	
PAY A FINE OF \$150.00		
PLUS A STATE PENALTY FUND ASSESSMENT OF \$420 PLUS \$30.00 CRIMINAL FINE SURCHARGE (PURSUANT ?		
\$40.00 COURT OPERATIONS ASSESSMENT (PURSUANT	TO 1465.8(A)(1) P.C.)	
\$30.00 INSTALLMENT & ACCOUNTS RECEIVABLE FEE \$30.00 CRIMINAL CONVICTION ASSESSMENT (PURSU)		
DEFENDANT TO PAY FINE TO THE COURT CLERK DEFENDANT SHALL PAY A RESTITUTION FINE IN THE A	MOUNT OF \$120.00 TO THE COURT	
TOTAL DUE: \$820.00	· · · · · · · · ·	
IN ADDITION: -OBEY ALL LAWS AND ORDERS OF THE COURT.	2	
-DEFENDANT ACKNOWLEDGES TO THE COURT THAT THE I UNDERSTANDS AND ACCEPTS ALL THE PROBATION CON		
DEFENDANT AGREES TO ABIDE BY SAME.		
SENTENCE AND ORDER GRANTING SUMMARY PROBATION S	SIGNED AND FILED.	
DEFENDDANT REFUSES COMMUNITY SERVICE.		
DO NOT COMMIT THE SAME OR ANY SIMILAR OFFENSE.		
COUNT (01): DISPOSITION: CONVICTED		
MV ABSTRACT NOT REQUIRED EXT SCHEDULED EVENT:		
09/13/13 830 AM FINES/FEES DIST TORRANCE C	COURTHOUSE DEPT 005	
USTODY STATUS: ON PROBATION		
		1.11
	2	4 C
N 05/13/13 AT 1130 AM IN TORRANCE COURTHOUSE DE	PT CLK	118
ASE CALLED FOR FINES/FEES	1.	
ARTIES: NONE (JUDGE) NONE (CLERK) NONE (REP) NONE (DDA)		- Alexander
EFENDANT IS PRESENT IN COURT, AND NOT REPRESENTE DEFENDANT APPEARS IN PRO PER	D BY COUNSEL	
AYMENT IN THE AMOUNT OF \$820.00 PAID ON 05/13/13	RECEIPT # SBA468645011	
EXT SCHEDULED EVENT: ROBATION IN EFFECT		
EXT SCHEDULED EVENT:		
PROCEEDINGS TERMINATED		
USTODY STATUS: ON PROBATION.	-	
5/17/13 ARREST DISPOSITION REPORT SENT VIA FILE JUSTICE	TRANSFER TO DEPARTMENT OF	
		~
	:	8
<ul> <li>A second sec second second sec</li></ul>		

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	1	PROOF OF SERVICE
IRM RICHARDS   WATSON   GERSHON ISC attorneys at law - a professional corporation	2 3	I, Clotilde Bigornia, declare:
	4 5	I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On July 16, 2013, I served the within document(s) described as:
	6 7 8	OPPOSITION OF DEFENDANT CITY OF REDONDO BEACH TO PLAINTIFF'S EX PARTE APPLICATION FOR STAY PENDING APPEAL; DECLARATION OF T. PETER PIERCE IN SUPPORT
	9	on the interested parties in this action as stated below:
	10 11 12	Charles Nichols P.O. Box 1302 Redondo Beach, CA 90278 Tel: (424) 634-7381
	13 14 15	[X] (BY OVERNIGHT EXPRESS MAIL DELIVERY) By placing the document(s) listed above in a sealed envelope with Express Mail postage thereon fully prepaid, addressed as set forth above, and causing the envelope to be deposited with the United States Postal Service.
	16	I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.
	17	Executed on July 16, 2013, at Los Angeles, California.
	18	I declare under penalty of perjury that the foregoing is true and correct.
	19 20	- Romin
	21	Ćlotilde Bigornia
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se 2:11-cv-09916-SJO-S\$ Document 125 Filed 08/05/13 Page 1 of 3 Page ID #:1851 FILED 2013 AUG - 5 AM 11: 52 1 Charles Nichols PO Box 1302 Redondo Beach, CA 90278 Voice: (424) 634-7381 E-Mail: CharlesNichols@Pykrete.info 2 3 In Pro Per 4 BX 5 6 7 United States District Court 8 Central District of California 9 10 Charles Nichols, Case No.: 11 PLAINTIFF, CV-11-9916 SJO (SS) 12 vs. 13 NOTICE OF VOLUNTARY DISMISSAL WITHOUT KAMALA D. HARRIS, Attorney 14 General, in her official capacity as PREJUDICE AGAINST 15 DEFENDANT CITY OF REDONDO BEACH AND DOES 1 TO 10 Attorney General of California, CITY 16 **PURSUANT TO F.R.C.P** OF REDONDO BEACH and DOES 1 41(a)(1)(A)(i) 17 to 10. 18 Defendants. 19 Time: N/A 20 Date: N/A Date: N/A Location: United States Courthouse 312 North Spring Street Los Angeles, CA 90012-4701 21 22 Judge: Samuel James Otero 23 Magistrate: Suzanne H. Segal Date Action Filed: November 30, 2011 24 25 26 27 28 1 Charles Nichols v. Edmund G Brown Jr et al Notice of Voluntary Dismissal

( 12 - 17	Case 2:11-cv-09916-SJO-S\$ Document 1	25 Filed 08/05/13 Rage 2 of 3 Page ID #:18	352		
2	<ul> <li>Pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i) Plaintiff, In Pro Per, Charles</li> <li>Nichols voluntarily dismisses his action, without prejudice, against Defendant</li> <li>CITY OF REDONDO BEACH and Does 1 to 10.</li> </ul>				
4	NI 'II - D. C. L. CUTX OF DEDONIDO DE A CH por Door 1 to 10 has				
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8	t 11 1. Di ini CONI-le la Dra Dan ia franto rafila hia claima agginst				
. 9	9 CITY OF REDONDO BEACH and Does 1 to 10 at any time.				
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11					
12					
13		1			
15	Dated: August 5, 2013	Respectfully submitted,			
16					
17					
18		By: Charles Nichols			
19		By: Charles Nichols PLAINTIFF in Pro Per PO Box 1302			
20 21		Redondo Beach, CA 90278 Voice: (424) 634-7381 E-Mail:	• :		
21		CharlesNichols@Pykrete.info			
23	///				
24	///				
25	///				
26					
27					
28	///				
	Notice of Voluntary Dismissal	2 Charles Nichols v. Edmund G Brown Jr et al			

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2013, I have filed and served the foregoing

### NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

### AGAINST DEFENDANT CITY OF REDONDO BEACH AND DOES 1 TO

## 10 PURSUANT TO F.R.C.P 41(a)(1)(A)(i) by causing an original and one copy

of the notice and any attachments to be delivered to the Clerk of the Court by hand

and one copy via US Mail to each of the attorneys to be noticed:

Jonathan Michael Eisenberg, Deputy Attorney General Direct: 213-897-6505 CALIFORNIA DEPARTMENT OF JUSTICE Suite 1702 300 S. Spring Street Los Angeles, CA 90013

Lisa Bond Direct: 213-626-8484 RICHARDS, WATSON & GERSHON Suite 4000 355 South Grand Avenue Los Angeles, CA 90071-3101

Thomas Peter Pierce Direct: 213-626-8484 RICHARDS, WATSON & GERSHON 40th Floor 355 South Grand Avenue Los Angeles, CA 90071-3101

Charles Nichols, In Pro Per CV-11-9916 SJO (SS)

### **CERTIFICATE OF E-FILING AND SERVICE**

Court:U.S. Court of Appeals, Ninth CircuitCase Name:Nichols v. BrownCase No.:13-56203

I, R. Velasco, declare as follows:

I am 18 years of age or older and not a party to this matter. I am employed in Los Angeles, California, in the Office of the Attorney General, Department of Justice, State of California, which is the office of a member of the California State Bar, at which member's direction the following service is made.

I certify that at least some of the past or present participants in the above-entitled case are registered CM/ECF users. I further certify that, with Jonathan M. Eisenberg, one of the attorneys of record in the above entitled case, I electronically filed the document entitled **BRIEF OF RESPONDENT CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS** with the Clerk of the Court for the U.S. Court of Appeals, Ninth Circuit, by using the appellate CM/ECF system on September 4, 2013. Participants in the case who are registered CM/ECF users will thereby be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed [1] **BRIEF OF RESPONDENT CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS**, [2] **SUPPLEMENTAL EXCERPTS OF RECORD**, **VOLUME 1 (SER000001-37)**, [3] **SUPPLEMENTAL EXCERPTS OF RECORD**, **VOLUME 2 (SER000038-219)**, and [4] **SUPPLEMENTAL EXCERPTS OF RECORD**, **VOLUME 3 (SER000220-350)** by firstclass U.S. mail, postage prepaid, or have dispatched the documents to a third-party commercial carrier for delivery within three calendar days to the following CM/ECF non-participants:

Charles E. Nichols; P.O. Box 1302; Redondo Beach, CA 90278

C.D. Michel, Sean A. Brady; Michel and Associates, P.C.; 180 E. Ocean Blvd., Ste. 200; Long Beach, CA 90802

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on <u>September 4, 2013</u>, at Los Angeles, California.

R. Velasco Declarant

Signature