

SENIOR COUNSEL:
C. D. MICHEL*

SPECIAL COUNSEL
JOSHUA R. DALE
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
SEAN A. BRADY
SCOTT M. FRANKLIN
THOMAS E. MACIEJEWSKI
CLINT B. MONFORT
TAMARA M. RIDER
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

* Also admitted in Texas



180 East Ocean Boulevard • Suite 200
Long Beach • California • 90802
562-216-4444 • www.michel lawyers.com

OF COUNSEL
DON B. KATES
BATTLEGROUND, WA

MATTHEW M. HORECZKO
LOS ANGELES, CA

RUTH P. HARING
LOS ANGELES, CA

GLENN S. McROBERTS
SAN DIEGO, CA

AFFILIATE COUNSEL
JOHN F. MACHTINGER
JEFFREY M. COHON
LOS ANGELES, CA

DAVID T. HARDY
TUCSON, AZ

MEMORANDUM

**Re: Senate Bill 610's New Requirements for Processing Applications
for Licenses to Carry Handguns Effective January 1, 2012**

Date: July 3, 2012

I. INTRODUCTION

California law establishes an application process via California Penal Code sections 26150 – 26225¹ for obtaining a license to carry a handgun (a “CCW”). The license-issuing authority (“issuing authority”) is the sheriff or chief of police of the respective city, city and county, or county.

The issuing authority is statutorily authorized to determine whether an applicant has “good cause” for a license, is of “good moral character,” and is a resident of the issuing authority’s jurisdiction (or, in some cases, spends substantial time in the county due to business). Issuing authorities may also require the applicant to complete a training course of the issuing authority’s choosing, subject to some limitations. Issuing authorities are also statutorily authorized to charge certain fees, but that authority is limited, as is the ability to impose conditions on applicants beyond what is provided in the Penal Code.

¹ The Nonsubstantive Reorganization of the Deadly Weapon Statutes, effective January 1, 2012, changed the numbering of California Penal Code sections concerning firearms. Prior to that change, the laws governing Carry Licenses issuance were found at Penal Code sections 12050 – 12054. This memorandum uses the new numbers.

Disclaimer: The information contained in this memorandum has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C. does not warrant or guarantee the accuracy, completeness, adequacy or currency of the information contained in this memorandum. Users of information from this memorandum do so at their own risk. This memorandum does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice, consult an attorney.

Re: Senate Bill 610's New Requirements for Processing Applications for Licenses to Carry Handguns
Effective January 1, 2012
Date: July 3, 2012

Senate Bill 610 (SB 610), effective January 1, 2012, changed some of the legal obligations of issuing authorities when processing applications for a CCW. Some of these changes create completely new legal requirements for issuing authorities, while others simply restate and clarify the law's previously existing requirements. This memorandum discusses each of SB 610's changes, and explains how issuing authorities can comply with them.

For ease of reference, SB 610 amended existing Penal Code sections 26165, 26190, and 26205, and added new Penal Code section 26202.

II. NEW REQUIREMENTS

1. Agencies Must Have a Published Written Policy Explaining Their Criteria for Issuing a License to Carry a Handgun

Prior to the passage of SB 610, there was some confusion about whether Penal Code section 26160 (former section 12050.2) merely required issuing authorities to publish a written summary of section 26150 and subsections (a) and (b) of 26155 (former subsections (A) and (B) of 12050(a)(1)), or required them to publish their specific policy for evaluating applicants under those criteria. The revisions made by SB 610 clarify that, effective January 1, 2012, it is the latter.

SB 610 therefore requires issuing authorities to publish an official written policy explaining the circumstances under which they consider an applicant to:

- a) Have "good cause" for a CCW;
- b) Be of "good moral character"; and
- c) Be a "resident" of the respective county or city (or, for sheriffs only, to qualify for a non-resident license based on business activity in the county).

Additionally, this official written policy must explain exactly what firearm training, if any, is required by the issuing authority per Penal Code section 26165.

2. Issuing Authorities Must Provide Specific Written Notice of Their "Good Cause" Determination

SB 610 added section 26202 to the California Penal Code. That section requires issuing authorities to provide a CCW applicant with *written notice* of their determination of the applicant's "good cause" per

Disclaimer: The information contained in this memorandum has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C. does not warrant or guarantee the accuracy, completeness, adequacy or currency of the information contained in this memorandum. Users of information from this memorandum do so at their own risk. This memorandum does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice, consult an attorney.

section 26150 or 26155. This written notice must inform the applicant that either:

- a) "Good cause" exists and the applicant should continue with any required training pursuant to Penal Code section 26165; or
- b) The CCW is denied for lack of "good cause," stating the specific reason why the applicant lacks "good cause" under the issuing authority's written policy (as required by section 26160).

To be clear, where an applicant is denied for lack of "good cause," the issuing authority must point to the specific aspect of its written "good cause" policy which the applicant has not met in order to justify its denial.

3. No Training Fee Can Be Required Until Written Notice of "Good Cause" Is Provided to the Applicant

Prior to SB 610, the law was unclear as to whether issuing authorities could charge a fee for the training course before "good cause" was determined, due to the ambiguous language in subsections (b)(1) and (g) of section 26190 (former sections 12054(j) and (d) respectively). And most issuing authorities interpreted those provisions as allowing them to. In response, SB 610 amended Penal Code section 26165's provisions regarding the training courses that applicants can be required to complete in order to be eligible for a CCW. Specifically, it added subsection (d) to section 26165, which now expressly prohibits issuing authorities from requiring an applicant to pay for any mandatory training course before a "good cause" determination is made as required under section 26202 described above.

4. Permissible and Prohibited Costs and Fees

SB 610 amended Penal Code section 26190's requirements regarding fees and conditions that may be imposed on CCW applicants. It makes it so issuing authorities can now account for the costs of any required written notices they must provide to applicants (e.g., determination of "good cause") in setting the amount of the fee they charge to process a CCW application (which still remains statutorily capped at \$100 maximum).

Through Penal Code section 26190, SB 610 also reaffirms that certain costs and fees beyond those expressly allowed by the Penal Code are prohibited. Although this appears to have already been the law before SB 610 was enacted, SB 610 now *expressly* prohibits issuing authorities from requiring applicants to obtain a liability insurance policy as a condition to obtaining a CCW.

Disclaimer: The information contained in this memorandum has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C. does not warrant or guarantee the accuracy, completeness, adequacy or currency of the information contained in this memorandum. Users of information from this memorandum do so at their own risk. This memorandum does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice, consult an attorney.

5. Requirements for Section 26205

Finally, before SB 610 passed, Penal Code section 26205 merely required issuing authorities to notify applicants whether they were approved or denied a CCW within the provided time limit (90 days from the application's submission or 30 days from receipt of the California Department of Justice's background check, whichever is later). SB 610 amended section 26205 to require that the notice also state which of the specific statutory criteria found in section 26150 or 26155 (i.e., "good cause," "good moral character," "residency," or firearm training) the applicant failed to satisfy.

While section 26202 (described in part 2 above) requires issuing authorities to state the specific aspect of their written policy that an applicant does not meet when denied for lack of "good cause," when an applicant is denied for another reason, the issuing authority need only state the statutory criterion that was not met – i.e., lack of "good moral character," lack of residency, or failure to complete the required training. The issuing authority does not have to provide an explanation of why the applicant did not meet that criterion. Nothing prohibits them from providing such an explanation however.

III. CONCLUSION

The passage of SB 610 altered the law as to what is required of issuing authorities in processing CCW applications. Various groups are monitoring local agencies for compliance. We hope you find this memorandum helpful in explaining those requirements, so that your agency can conform its practice to current law.

For Additional Assistance

California firearm laws are particularly complex. There is great confusion about what the law requires among those who are responsible for enforcing it, as well as for those who choose to own a gun for work, hunting, sport, or to defend themselves and their families. There are now over 700 California state statutes regulating firearm manufacture, distribution, sale, and possession. This figure does not include court rulings, local ordinances, and written and unwritten policies of the Department of Justice, nor does it include complex and comprehensive overlapping federal laws and regulations. If you need clarification or assistance in complying with SB 610, please contact our office.

Michel & Associates, P.C. has the largest and most respected firearms law practice in California. For

Disclaimer: The information contained in this memorandum has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C. does not warrant or guarantee the accuracy, completeness, adequacy or currency of the information contained in this memorandum. Users of information from this memorandum do so at their own risk. This memorandum does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice, consult an attorney.

Re: Senate Bill 610's New Requirements for Processing Applications for Licenses to Carry Handguns
Effective January 1, 2012

Date: July 3, 2012

links to free information that may help you answer firearms law related questions, the "Reference Materials" section of our website has a subsection on firearms law reference materials <http://michellawyers.com/reference-materials/firearm-law-references/>. To stay updated on firearms law issues, we encourage you to subscribe to our Firearms Law newsletters by visiting <http://michellawyers.com/subscribe/>. And, if you are interested in obtaining a copy of our Model Policy for issuing handgun carry licenses, please request one by submitting an email to Cmichel@michellawyers.com.

www.michellawyers.com

Disclaimer: The information contained in this memorandum has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C. does not warrant or guarantee the accuracy, completeness, adequacy or currency of the information contained in this memorandum. Users of information from this memorandum do so at their own risk. This memorandum does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice, consult an attorney.