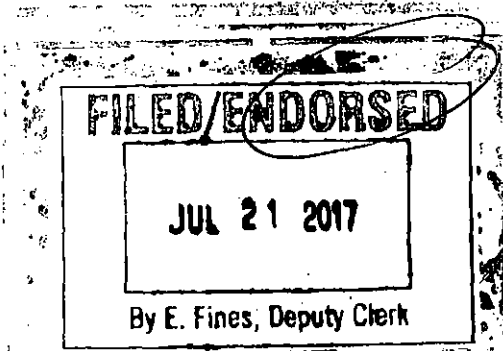


BY FAX

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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO

11 DAVID GENTRY, JAMES PARKER,
12 MARK MIDLAM, JAMES BASS, and
13 CALGUNS SHOOTING SPORTS
14 ASSOCIATION,

15 Plaintiffs and Petitioners,

16 vs.

17 XAVIER BECCERA, in His Official
18 Capacity as Attorney General for the State
19 of California; STEPHEN LINDLEY, in His
20 Official Capacity as Acting Chief for the
21 California Department of Justice, BETTY
22 YEE, in her official capacity as State
23 Controller for the State of California, and
24 DOES 1-10.

25 Defendants and Respondents.

Case No. 34-2013-80001667

**SUPPLEMENTAL DECLARATION OF
SCOTT M. FRANKLIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ADJUDICATION OF FIFTH AND NINTH
CAUSES OF ACTION**

Date: August 4, 2017
Time: 9:00 a.m.
Dept.: 31
Judge: Hon. Michael P. Kenny
Action filed: 10/16/13

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DECLARATION OF SCOTT M. FRANKLIN

I, Scott M. Franklin, declare:

1. I am an attorney at law admitted to practice before all courts of the state of California. I have personal knowledge of each matter and the facts stated herein as a result of my employment with Michel & Associates, P.C., attorneys for Plaintiffs/Petitioners ("Plaintiffs"), and if called upon and sworn as a witness, I could and would testify competently thereto.

2. Exhibit 1 (GENT168-GENT173) is a true and correct copy of an opinion letter sent by the Legislative Counsel of California to then Senator Bill Morrow on August 28, 2002.

3. Exhibit 2 (GENT174-GENT193) is a true and correct copy of excerpts of the Senate Committee on Public Safety's report dated July 8, 2003, concerning Assembly Bill 161 (Steinberg, 2003).

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this Declaration was executed on July 21, 2017, at Glendale, California.



Scott M. Franklin, Declarant

EXHIBIT 1

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August 28, 2002

Honorable Bill Morrow
4048 State Capitol

DEALERS' RECORD OF SALE FEES: PERMISSIBLE USE - #15870

Dear Senator Morrow:

You have asked whether Assembly Bill No. 2080, as amended August 26, 2002 (hereafter A.B. 2080), if enacted, would authorize the use of revenues from the fees currently paid to dealers by the purchasers of firearms for the new purposes proposed in the bill. You have also asked whether the expenditure of those revenues, without authorization, for the new purposes proposed by A.B. 2080 would convert the fee imposed to a tax.

The dealers' record of sale fees are imposed in connection with the purchase of firearms from or through a firearms dealer. Specifically, subject to certain exceptions not relevant here, when a person initiates a firearm purchase with a firearms dealer, or a dealer facilitates the purchase between private parties, certain background information regarding the proposed purchaser is required to be checked by the Department of Justice (hereafter the department) prior to the transaction being completed (subd. (d), Sec. 12076, Pen. C.).¹

In connection with this procedure, the department may require the dealer to charge each firearm purchaser a fee for the cost of furnishing the information, and other specified administrative costs (subd. (e), Sec. 12076; hereafter the DROS fee). Subdivision (g) of Section 12076 provides that all money received by the department from these fees is deposited in the Dealers' Record of Sale Special Account of the General Fund (hereafter the DROS account), and is available, upon appropriation by the Legislature, for certain related expenditures. Similarly, Section 12084 provides for the transfer of firearms by certain sheriff's departments and provides for the department to charge the same fee for providing background information.

Although these are the only statutory provisions that specifically provide for the deposit of fees into the DROS account, we are informed that funds received from sources other

¹ All further section references are to the Penal Code, unless otherwise indicated.

than the fee imposed pursuant to subdivision (e) of Section 12076 are also deposited in the DROS account.²

The purposes for which the DROS fee that is collected from the purchasers of firearms may be spent are specified in subdivision (e), which provides as follows:

12076.

"(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

"(1) (A) The department for the cost of furnishing this information.

"(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

"(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

"(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

² We are informed by the Department of Justice that fees in connection with the following, imposed by the cited statutes, are deposited into the DROS account in addition to fees collected pursuant to subdivision (e) of Section 12076:

Peace Officer Standard Training (Sec. 13511.5).

Peace Officer Firearms Eligibility Applicant (subd. (c), Sec. 832.15).

Security Guard Firearms Eligibility Applicant (subd. (a), Sec. 7583.26, B.&P. C.).

Handgun reports for specified registrations (para. (1), subd. (f), Sec. 12076).

Assault weapon registration (subd. (a), Sec. 12285).

Firearm dealer's certificate of eligibility (para. (5), subd. (a), Sec. 12071).

Concealed weapons carry permit (subd. (a), Sec. 12054).

Centralized firearm dealer list, and dealer inspections (subd. (f), Sec. 12071).

Dangerous weapons licenses and permits (Secs. 12096, 12231, 12250, 12287, subd. (e), Sec. 12305, and Sec. 12424).

Firearms manufacturer's license (para. (3), subd. (b), Sec. 12086).

Gun show promoter's license (subd. (d), Sec. 12071.1).

Safe handgun testing fees and laboratory certification fees (subd. (b), Sec. 12130, and para. (1), subd. (b), Sec. 12131).

"(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

"(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

"(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

"(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

"(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

"(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

"The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072." (Emphasis added.)

Thus, subdivision (e) of Section 12076 provides that the fee imposed by that subdivision may be no more than is necessary to reimburse designated program purposes, and may not be used "to fund any other program." Nevertheless, subdivision (g) of Section 12076 identifies other purposes for which DROS account fees may be spent, as follows:

"12076.

"(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature,

for expenditure by the department to offset the costs incurred pursuant to this section, subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072 and Section 12289.

An issue is presented regarding the proper construction of subdivision (g). The issue is whether the phrase in that subdivision "to be available, upon appropriation by the Legislature" refers to the "money received by the department pursuant to this section," namely, the money received from the DROS fee, or if it refers to the DROS account generally.

Certain rules of statutory construction are useful in resolving this issue. If a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735). Further, statutes must be construed so as to give a reasonable and commonsense construction that is consistent with the apparent purpose and intention of the lawmakers, that is practical rather than technical, and that leads to wise policy rather than mischief or absurdity (*People v. Turner* (1993) 15 Cal.App.4th 1690, 1696). Finally, a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788).

Applying these rules, it is our view that the appropriate construction of subdivision (g) of Section 12076 is that the phrase "to be available, upon appropriation" refers generally to money in the DROS account, rather than specifically to the revenue from the DROS fee pursuant to subdivision (e) of Section 12076. A contrary construction would mean that the existing expenditure authorization in subdivision (g) of Section 12076 would be in conflict with the limitations in subdivision (e) of that section. In our view, that construction would not be a reasonable result, nor practical, nor in harmony with the overall legislative scheme, which clearly anticipates that the purposes in subdivision (g) be served (see *Lungren v. Deukmejian*, supra, at p. 735; *People v. Turner*, supra, at p. 1696; *Wells v. Marina City Properties*, supra, at p. 788).

Under existing law, the purposes in subdivision (g) for which DROS account funds may be expended include purposes not listed in subdivision (e) of Section 12076. For example, Section 12289 requires the department to conduct a public education program regarding the registration of assault weapons. However, because the DROS account contains funds in addition to the funds obtained pursuant to subdivision (e) of Section 12076, the purposes to which funds are directed pursuant to subdivision (g) may be accomplished without the use of subdivision (e) funds, and therefore without conflict with the provisions of subdivision (e).

A.B. 2080 would amend subdivision (g) of Section 12076 to additionally authorize costs incurred pursuant to Section 12083 as a purpose for which the funds in the DROS account may be expended, upon appropriation by the Legislature. Section 12083, as proposed to be added by A.B. 2080, provides as follows:

"12083. (a) A person who is licensed as a dealer, importer, manufacturer, or collector of firearms, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and whose licensed premises are within this state, shall, within 30 days of the

date of issuance of the license, provide a copy of the license with an original signature of the licensee to the Department of Justice in a manner to be determined by the department. If the date of issuance of the license is prior to January 1, 2004, the person shall provide a copy of the license with the original signature to the department no later than February 1, 2004.

"(b) A violation of this section is punishable as an infraction.

"(c) Any costs incurred by the department to implement this section and to implement the amendments made to Section 12071 by the act which enacted this section that cannot be absorbed by the department shall be funded from the Dealers' Record of Sale Special Account, as set forth in subdivision (g) of Section 12076, upon appropriation by the Legislature." (Emphasis added.)

Thus, Section 12083 would require a person federally licensed as a dealer, importer, manufacturer, or collector of firearms, whose licensed premises are in California, to submit a copy of his or her federal license to the department, as specified. A.B. 2082 also amends Section 12071 in conjunction with this requirement. The amendments to Section 12071 relate to maintaining the existing centralized list of firearms dealers maintained by the department. Subdivision (c) of Section 12083 would provide that costs incurred to implement the requirement imposed by proposed Section 12083 and costs related to maintaining the centralized list of firearms dealers would be funded from the DROS account, upon appropriation by the Legislature.

The question presented is whether the fees collected from a firearm buyer for a background check, imposed pursuant to subdivision (e) of Section 12076, may be used for the new purposes proposed by amendments to subdivision (g) of Section 12076, as proposed by A.B. 2080.

Subdivision (e) of Section 12076 specifies how the amount of that fee is set, and prohibits the expenditure of those fee revenues to fund any program not enumerated in that subdivision. A.B. 2080 would not amend subdivision (e) of Section 12076, and it is our conclusion, set forth above, that subdivision (g) of that section would not be construed, under existing law, to authorize revenues from that fee to be expended for any purpose not specified by subdivision (e) of Section 12076. The purposes for which fees collected pursuant to that subdivision may be used would not be changed by the proposed amendments to Section 12076 in the bill. To the extent additional purposes for expenditure of DROS account funds are proposed by amendment to subdivision (g) of Section 12076, it is our view that those new purposes likewise would be funded by money collected from fees other than the fee imposed by subdivision (e) of Section 12076, insofar as those fees are not similarly encumbered by other statutory restrictions.

In conclusion, it is our opinion that Assembly Bill No. 2080, as amended August 26, 2002, would not authorize the use of revenues from the fees currently paid to dealers by the purchasers of firearms for the new purposes proposed in the bill.

You have also asked whether the expenditure of the funds collected pursuant to subdivision (e) of Section 12076, without authorization, for the new purposes proposed in A.B. 2080 would convert the fee imposed to a tax.

As discussed above, we conclude that A.B. 2080 would not authorize the expenditure of these DROS fee funds for the new purposes proposed in A.B. 2080 and, consequently, A.B. 2080 would make no change that would raise the issue of whether the DROS fee should be recharacterized as a tax. That conclusion would not be changed by an unauthorized expenditure of those funds for the new purposes proposed by A.B. 2080. We perceive no basis upon which an unauthorized expenditure of these funds would be deemed to cause the DROS fee to be considered a tax.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By: 
Byron D. Damian, Jr.
Deputy Legislative Counsel

BDD:dsc

Two copies to Honorable Darrell Steinberg,
pursuant to Joint Rule 34.

EXHIBIT 2

SENATE COMMITTEE ON Public Safety
Senator Bruce McPherson, Chair
2003-2004 Regular Session

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AB 161 (Steinberg)
As Amended June 30, 2003
Hearing date: July 8, 2003
Penal Code
SH:mc

DEALERS RECORD OF SALE SPECIAL ACCOUNT -

EXPANDING AUTHORIZED USE -

APPROPRIATION TO FUND FIREARMS TRAFFICKING PREVENTION ACT OF

2002

HISTORY

Source: Department of Justice

Prior Legislation: AB 2080 (Steinberg) - Chapter 909, Statutes of 2002

SB 670 (Lewis) - Chapter 901, Statutes of 1995

Support: Women Against Gun Violence; Legal Community Against Violence

Opposition: NRA; California Rifle and Pistol Association

Assembly Floor Vote: No longer relevant

KEY ISSUES

SHOULD THE EXISTING SPECIFIC LIMITATIONS ON THE USE OF THE FUNDS IN THE DEALERS' RECORD OF SALE SPECIAL ACCOUNT OF THE GENERAL FUND BE EXPANDED BY ADDING USE BY THE DEPARTMENT OF JUSTICE "FOR THE COSTS ASSOCIATED WITH FUNDING DEPARTMENT OF JUSTICE

(More)

AB 161 (Steinberg)

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FIREARMS-RELATED REGULATORY AND ENFORCEMENT ACTIVITIES RELATED TO THE SALE, PURCHASE, LOAN, OR TRANSFER OF FIREARMS PURSUANT TO" CHAPTER 1 OF THE DANGEROUS WEAPONS CONTROL LAW?

(CONTINUED)

SHOULD \$548,000 BE APPROPRIATED FROM THE DEALERS' RECORD OF SALE SPECIAL ACCOUNT TO THE DEPARTMENT OF JUSTICE TO IMPLEMENT THE FIREARMS TRAFFICKING PREVENTION ACT OF 2002?

SHOULD RELATED CHANGES IN LAW BE MADE?

PURPOSE

The purpose of this bill is (1) to expand the existing specific limitations on the use of the funds in the Dealers' Record of Sale Special Account of the General Fund by adding use by the Department of Justice "for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to" Chapter 1 of the Dangerous Weapons Control Law; (2) to appropriate \$548,000 from the Dealers' Record of Sale Special Account to the Department of Justice to implement the Firearms Trafficking Prevention Act of 2002; and (3) to make related changes in law.

Existing law does the following:

Requires all sales, loans, and transfers of firearms - including private party transfers - to be processed through or by a state-licensed firearms dealer or a local law enforcement agency. (Penal Code 12072(d).)

Provides that there is a 10-day waiting period when purchasing a firearm - or effecting a private party transfer - through a firearm dealer, during which time a background check is

(More)

conducted - and a handgun safety certificate is required for handguns - prior to delivery of the firearm. The licensed

deal shall submit purchaser information to the Department of Justice (DOJ), as prescribed, to enable the DOJ to complete background checks. (Penal Code 12071, 12072, and 12076.)

Requires that the Department of Justice determine whether the purchaser or transferee is among a specified category of persons who are prohibited to possess firearms; the department is required to immediately notify the dealer and local law enforcement upon ascertaining that fact. In addition, the department is authorized to charge the dealer a fee sufficient to reimburse specified costs, including, but not limited to, the costs of furnishing this information. (Penal Code 12076.)

The Dealers Record of Sale (DROS) fee is charged by the Department of Justice to dealers; the dealers in turn charge that fee to purchasers.

Provides that the Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program (Penal Code 12076(e).):

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code [regarding mental health issues].

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs

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Page 4

resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local

costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code [protective orders].

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c) [regarding the purchaser/transferee background information].

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code [personal handgun importers moving into California].

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072 [personal handgun importers]. The fee established pursuant to Penal Code section 12076(e) shall not exceed the sum of the actual processing costs of the department and the estimated reasonable costs for the other items identified, as specified.

Provides that the DOJ may charge a fee sufficient to reimburse the DOJ for each of the following but not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations (Penal Code 12076(f)):

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer

(More)

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nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT [Law Enforcement Firearms Transfer Form] to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (1) of Section 12078 or paragraph (18) of

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subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

Provides that if the DOJ charges a DROS/LEFT fee, it shall be charged in the same amount to all categories of transaction that are within that subparagraph; that any costs incurred by the DOJ to implement the DROS fee shall be reimbursed from fees collected and charged pursuant to that authorization; and provides that no fees shall be charged to the dealer or a law enforcement agency for costs incurred for implementing the system.

Provides that all money received by the DOJ pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset specified costs.
(Penal Code 12076(g).)

Existing law - the Firearms Trafficking Prevention Act of 2002 - requires California firearms dealers provide specified information to the DOJ and that a new program be implemented, as specified, requiring that out of state Federal Firearms License

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Page 6

holder shipping firearms to California firearms dealers obtain confirmation that the California dealer does have a valid license in this state, as prescribed. (Enacted in AB 2080 (Steinberg) - Chapter 909, Statutes of 2002.) Those provisions are effective, as follows:

1. Any costs incurred by the DOJ to implement the new requirements for out-of-state firearms dealers section shall be funded from the Dealers' Record of Sale Special Account, as set forth in subdivision (g) of Section 12076, upon appropriation by the Legislature.
2. The Firearms Trafficking Prevention Act of 2002 shall become operative on January 1, 2004, if the actual reserve balance in the Dealers' Record of Sale Special Account is \$1,000,000 or more on January 1, 2004, as determined by the DOJ. If the reserve balance is not equal to \$1,000,000 or more on January

1, 2004, as determined by the DOJ, specified provisions shall become operative when the DOJ determines that the actual reserve balance in the Dealers' Record of Sale Special Account equals \$1,000,000 or more.

This bill does the following:

Expands the existing specific limitations on the use of the DROS fees in the Dealers' Record of Sale Special Account of the General Fund by adding use by the Department of Justice "for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to" Chapter 1 of the Dangerous Weapons Control Law.

Adds to the limit on the DROS fee inclusion of estimated costs "the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to" Chapter 1 of the Dangerous Weapons Control Law.

(More)

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Appropriate \$548,000 from the Dealers' Record of Sale Special Account to the Department of Justice to implement the Firearms Trafficking Prevention Act of 2002.

Makes related changes in law.

COMMENTS

1. Need for This Bill

The sponsor indicates the following (emphasis by the sponsor):

Because of enforcement activities funded by the state legislature from the Dealers' Record of Sale Special Account (DROS), and funding sources added over the last 24 months, California has gone from almost no enforcement of firearms laws relating to sales, transfers, purchase or loans of firearms to having investigated a wide number of firearm dealers, criminally prohibited individuals and illegal firearm possessors and sellers.

The Department of Justice has identified more than 1000 law violations by firearm dealers and investigated more 500 illegal firearm possessions by individuals who have purchased guns in CA but fell into prohibited category. In addition, we have discovered 2,500 illegally prohibited firearm and other dangerous weapons transactions and seized those weapons as a result. Unfortunately, because of a recent legislative counsel opinion, the Department of Justice feels strongly that clarification of enforcement activity and the use of the DROS account to fund it is of extreme importance. At issue is whether or not the DROS fee (which makes up more than 80% of the DROS Fund) can be used to fund DOJ enforcement of the gun laws.

Over last ten years, California's firearm laws have changed substantially with new bills being enacted almost every year including:

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Assault Weapons and Magazines ban (Perata, 1999)
Handgun Safety Standards (Polanco, 1999)
One Handgun a Month (Knox, 1999)
Child Safety Locks (Scott, 1999)
Gun Show Enforcement (Corbett, 1999)
Penalty Increase for Carrying a Concealed Weapon (Scott, 1999)
Gun Ownership Prohibitions for Domestic Violence Perpetrators (Various bills)
Prohibition of Gun Ownership for Individuals who are Subject to WIC 5150 (Scott, 1999)
Armed and Prohibited (Brulte, 2001)
Handgun Safety Training (Scott, 2001)
Gun Dealer License Verification (Steinberg, 2002)
Retest Handguns (Koretz, 2002)

Most of these bills came with no funding for enforcement, however, some identified the DROS fund as a funding source for enactment, i.e., Assault Weapons Public Education Campaign, Handgun Retesting, and Gun Dealer License Verification.

Attorney General Lockyer feels it is of utmost importance that the Department of Justice work to enforce California's landmark firearms laws to ensure that those who are prohibited from possessing or purchasing firearms do not

gain illegal access to guns. Furthermore, he believes, as the code states, that the Department must monitor gun commerce in the state to ensure that all laws relating to firearms sales, gun standards and prohibitions be strictly enforced. Finally, he feels that it is important that those laws be enforced by fees paid directly by those who engage in gun commerce in California (gun dealers, purchasers and transferees) under the 12000 series of the Penal Code.

From the continuing mantra of "enforce the current gun laws" by the National Rifle Association to the call for preventing illegal gun sales and trafficking by the gun

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safety community, every statewide, indeed national, organization concerned with guns desires that the Department put significant effort into enforcement of gun laws. The Department's activities, as approved in the Budget Act over the last 2 years, have been exactly that.

When the legislature identifies a firearm program that they would like to fund and when they specify that the funding shall be from DROS, of course the legislature is talking about the fees with background check fees that make up more than 80% of the DROS account rather than taking from specific items that fund other activities such as dangerous weapon explosive permit inspections, handgun safety certificates testing and the one dollar firearm safety device development/monitoring.

Current state enforcement of alcohol, tobacco, hunting, fishing and prescription drug laws are just a few of the state enforcement areas where users/purchasers fund state regulatory and enforcement activity. In fact, 33% of fish and game licensing fees (or \$31.4 million) go towards conservation education and enforcement. Although the Department of Justice believes it currently uses the DROS fund and fees appropriately, we wish to clarify how the DROS fee may be used to avoid further debate as raised in the legislative counsel's opinion of August 28, 2002.

2. Expansion on Use of the Dealers' Record of Sale Fees

As noted in the author's background and the Purpose section, above, there is a Dealers Record of Sale Fee and there is a Dealers' Record of Sale Special Account in the General Fund for

appropriation by the Legislature. However, while the DROS fee is deposited in that account, the account contains other fees as well.

Committee staff's general impression is that this bill is intended to resolve two issues, at least. The first is that funding for last year's AB 2080 - the Firearms Trafficking Prevention Act of 2002 - may not be funded under the current law

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and that the creative drafting of the funding for that bill is problematic.

Therefore, this bill could have simply added that act to the authorized uses of the DROS fee and made the appropriation also included in this bill.

However, this bill also changes the authorized use of the DROS fee by adding a new general authorization for:

costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms [pursuant to Chapter 1 of the Dangerous Weapons Control Law].

That more general authority appears to be designed to allow the DOJ the kind of "flexibility" in using DROS fees than exists under current law, including funding AB 2080.

The sponsor argues that this bill will not expand the use of DROS fees, but clarify their use, and asserts that:

The Legislature has historically appropriated DROS funds for purposes that include regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms. This bill will not authorize DOJ to spend DROS fees for purposes other than what the Legislature has already approved through Budget Act appropriations. Additionally, two other 2002 bills specified that they be funded by DROS (AB 2580 [note: contingent on specific conditions of the fund] and AB 2902). As of right now, the Legislature has included funding from DROS for these two bills in the 03-04 Budget Bill.

The sponsor further asserts that that without the broader change proposed by this bill, the DOJ would - If the Legislative

Counsel's opinion were strictly followed - have to stop or curtail a number of activities. The sponsor has provided a two-page list of 24 such activities which are listed in their

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entirety in the last comment to this analysis.

SHOULD THAT NEW "GENERAL" AUTHORITY FOR THE USE OF DROS FEES BE ADDED TO LAW?

WOULD IT INSTEAD BE APPROPRIATE TO ONLY ADD AUTHORITY TO USE THE DROS FEES FOR AB 2080?

In addition, the Chapter referred to includes Penal Code section 12000 through 12101. All of those sections pertain to dangerous weapons, including firearms. Firearms are defined in several subdivisions of Penal Code section 12001. This bill's limiting language added does include "sale, purchase, loan, or transfer" so the DOJ has placed some limits on the new broader authority for use of the DROS fee.

ARE THE "LIMITATIONS" INCLUDED IN THIS BILL APPROPRIATE AND SUFFICIENT?

In addition, this bill does not authorize the DOJ to increase DROS fees beyond the current authority in law.

3. Appropriation of \$548,000 in This Bill

The sponsor indicates the following about the appropriation in this bill:

The Legislature funded the implementation of three bills from the DROS fund last year: AB 2080, AB 2902 and AB 2580.

Assembly Bill 2080 (Steinberg, 2002) required DOJ to establish a process to ensure that FFL's in California who accept guns are also licensed under California law. The costs for AB 2080 are one-time and AB 161 (Steinberg, 2003) would appropriate the funds from the DROS account to DOJ for implementation.

Assembly Bill 2580 (Simitian, 2002) required annual inspections of Dangerous Weapons Permit Holders, (except if

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they have fewer than five devices, then inspections would only be required every five years). Senate Bill 1312 required DOJ to establish a fee schedule to pay for these costs (\$165,000 approx annually) by January 1, 2006. Dangerous Weapons permit fees are also deposited into and paid from the DROS fund.

Assembly Bill 2902 (Koretz) was permissive. It authorized DOJ to retest up to 5% of handguns on the Roster of approved handguns for sale. If fully implemented, ongoing costs will be \$120,000 annually. First year costs would include another \$30k for regulations. Manufacturers would be required to reimburse DROS for reinstatement testing (\$30k approx).

The DROS fund is healthy. The Department has not raised fees in 10 yrs. Assembly Bill 161 would only clarify DOJ's authority to use the fund for the activities it is already budgeted for, which include enforcement and regulatory activities specified in AB 161. According to the DROS Fund Condition Statement contained in the 03 Governor's Budget (page LJE 76), a reserve of \$3.1M is projected for the DROS fund in 02-03 and a reserve of \$1.7M is projected in 03-04.

However, more recent Department calculations project a reserve of \$4.0 M in 02-03 and \$3.2M in 03-04.

4. Further Information About the DROS Fee

The previous comment contains information from the DOJ about the condition of the DROS Fund in general. In addition, the DOJ has provided the following from the November 1, 2002, report to the Legislative Analyst's Office "Supplemental Report of the 2002 Budget Act":

Local law enforcement agencies in California began conducting background checks for firearm purchasers approximately 80 years ago. This responsibility shifted to the Department of Justice approximately 50 years ago. Through the years, firearm background checks have changed from a manual process to a complex and comprehensive

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electronic background check. The background check has expanded from relatively few prohibiting categories to today where the check is a comprehensive screening of prohibiting felony, violent misdemeanor, mental health, restraining order, and federal violation prohibitions. Many of these changes resulted from 1991 legislation. Other changes are the result of more recent legislation. Some of the post-1991 changes include reducing processing time so that the waiting period could be reduced from 15 days down to 10, expanding prohibiting violent misdemeanor categories to include crimes such as stalking, carrying a firearm on school grounds, threatening witnesses and other firearm related prohibitions. Also, since 1991 the screening has been broadened to include additional categories of restraining orders, civil, criminal and work-place protective orders as well as increasing the number of states participating in the background check process from 22 states to over 37 states to determine whether or not the purchaser may be prohibited due to a criminal conviction resulting in another state.

Additionally in 1996, the National Instant Criminal Background Check System (NICS) was incorporated into the California background check process to identify federal firearm prohibitions. These changes, along with improvements in validating purchaser information and in limiting handgun purchasers to one gun a month, occurred while the prohibiting databases including criminal, mental health and restraining orders grew in size. Consequently, the background check carried out today is much more expansive, comprehensive, and thorough while the time allowed for processing has been reduced by 1/3. Even with these dramatic changes post-1991, the cost associated with carrying out this check has remained constant for more than a decade.

The Department of Justice has been able to successfully accomplish these changes while maintaining firearm purchaser costs by streamlining processes, incorporating data processing solutions, and combining like processes.

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These like processes are the firearm purchaser eligibility checks performed for prospective firearm purchasers (DROS checks) and the background check carried out for peace officers, armed security guards, assault weapon registrants, concealed weapon permittees, voluntary firearm registrants, etc. Rather than setting up unique programs for each of these categories, the background check process, which is identical for each of these categories, is carried out by a pool of staff that can shift the workload to meet fluctuating volumes associated with each of these categories. It is the economies of scale, the shifting of background check personnel, and employing improvements in technology that has enabled the department to keep the DROS fee as well as the fee charged to others needing a firearm eligibility check at \$14.00.

The department believes that the pooling of resources and sharing of equipment and supervision is consistent with California law and as required by PC section 12076(f)(1). The department only charges a fee sufficient to reimburse for the PC section 12076 process, and all DROS monies deposited into the DROS account are used only by the Department to offset the costs incurred pursuant to this section.

5. Legislative Counsel Opinion

The Legislative Counsel did prepare an opinion at the request of Senator Morrow that asked the following questions:

You have asked whether Assembly Bill No. 2080, as amended August 26, 2002, [final amended version] (hereafter A.B. 2080), if enacted, would authorize the use of revenues from the fees currently paid to dealers by the purchasers of firearms for the new purposes proposed in the bill. You have also asked whether the expenditure of those revenues, without authorization, for the purposes proposed by A.B. 2080 would convert the fee imposed to a tax.

The opinion, dated August 28, 2002 - delivered to Assemblymember

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Steinberg as well pursuant to Joint Rule 34 - concludes:

? A.B. 2080 would not authorize the expenditure of these DROS fees for the new purposes proposed in A.B. 2080 and, consequently, A.B. 2080 would make no change that would raise the issue of whether the DROS fee should be recharacterized as a tax. That conclusion would not be changed by an unauthorized expenditure of those funds for the new purposes proposed by A.B. 2080. We perceive no basis upon which an unauthorized expenditure of these funds would be deemed to cause the DROS fee to be considered a tax.

That opinion discusses the specific nature of the provisions of Penal Code section 12076(e), (f), and (g) - see Purpose section of this analysis, above - and discusses the appropriate construction of section (g) and the fact that the DOJ deposits funds from 12 other sources in the DROS account, for example fees for assault weapon registration (Penal Code section 12285(a)) and Commission on Peace Officer Standards and Training fees collected pursuant to Penal Code section 13511.5. Thus the opinion also concludes that:

? it is our view that the appropriate construction of subdivision (g) of Section 12076 is that the phrase "to be available, upon appropriation" refers generally to money in the DROS account, rather than specifically to the revenue from the DROS fee pursuant to subdivision (e) of Section 12076. ? Under existing law, the purposes in subdivision (g) for which DROS account funds may be expended include purposes not listed in subdivision (e) of Section 12076. For example, Section 12289 requires that department to conduct a public education program regarding the registration of assault weapons. However, because the DROS account contains funds in addition to the funds obtained pursuant to subdivision (e) of section 12076, the purposes to which funds are directed pursuant to subdivisions (g) may be accomplished with the use of subdivisions (e) funds, and there without conflict with the provisions of subdivisions (e).

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6. Implementing the Firearms Trafficking Prevention Act of 2002

As noted in the Purpose section, above, AB 2080 contained the following language:

SEC. 9. Notwithstanding subdivision (c) of Section 12083,

Section 12083 of the Penal Code, and the amendments made to Section 12071 of the Penal Code by this act shall become operative on January 1, 2004, if the actual reserve balance in the Dealers' Record of Sale Special Account is one million dollars (\$1,000,000) or more on January 1, 2004, as determined by the department. If the reserve balance is not equal to one million dollars (\$1,000,000) or more on January 1, 2004, as determined by the department, those provisions shall become operative when the department determines that the actual reserve balance in the Dealers' Record of Sale Special Account equals one million dollars (\$1,000,000) or more.

7. Elimination of the "ghost" Version of Penal Code Section 12071 in Section 1 of This Bill

This bill does delete a non-operative version of Penal Code section 12071 created by AB 2793 (Pescetti) - Chapter 911, Statutes of 2002 - that was created in a flurry of double-jointing amends last year involving section 12071. However, this bill does not delete the operative section 12071 otherwise created in law.

8. Support for This Bill

The letter in support of this bill from Women Against Gun Violence includes:

The Department of Justice has made great strides these past few years in the enforcement of important firearms legislation and we believe that such momentum must continue and increase. Given that these funds are already allocated to and used by the DOJ, that a budget reserve is projected

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for this fiscal year and that the DROS fees have not been raised in ten years, we believe that the fiscal implications of AB 161 passage are negligible to all sides, and that this bill makes sense.

9. Opposition to this bill

The NRA letter in opposition includes the following:

The proposed changes to the Penal Code in AB161 would change a long established policy for the use of the Dealer Record of Sale

(DROS) fees collected for the background checks on firearms transferees.

The proposed language would allow the Department of Justice (DOJ) to use the DROS fees collected for DOJ Firearms Division programs that are not related to conducting and administering the background checks for the transfer of firearms.

We understand that there are difficulties for the DOJ Firearms Division in funding some of their programs, the solution would be for the legislature to appropriate the funds necessary for the DOJ to do their work.

10. List of Activities the Sponsor States Would Have to be
Curtailed or Stopped if the Legislative Counsel's Opinion was
Strictly Followed

As noted in Comment #2, above, the DOJ asserts that without the broader change proposed by this bill, the DOJ would - if the Legislative Counsel's opinion were strictly followed - have to stop or curtail a number of activities. First the DOJ indicates that approximately 75% of DOJ's Firearms Division (75 of 105 positions) is budgeted from DROS. Second, the DOJ indicates

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that many of the following Division functions would either have to cease operation or function without enforcement or administrative oversight if the Legislative Counsel opinion were strictly enforced:

Dealers' Record of Sale (DROS). Gun buyers firearms eligibility background checks.

Peace Officer Standard Training (POST). Firearms eligibility background check to allow non-sponsored individuals to attend a peace officer training academy.

Peace Officer Firearms Eligibility. Firearms eligibility background check for peace officer applicants.

Security Guard Firearm Eligibility. Firearms eligibility background check for armed security guards.

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Handgun Reporting (Voluntary Registrations, Operation of Law, New Resident Report of Handguns, Curio/Relic). All require firearms eligibility background checks.

Law Enforcement Assault Weapon Registration. Firearms eligibility background check and gun registration process for persons who possess assault weapons as defined by state law.

Certificate of Eligibility. Fingerprint based firearms eligibility background check required on gun dealers, gun show promoters and persons applying for local explosive permits used for construction, employees of gun manufacturers, etc.

Carry Concealed Weapon Licenses. State required fingerprint based firearms eligibility background check on citizens authorized to carry a concealed handgun on their person.

Centralized List of Gun Dealers/Dealer Inspection. Gun dealer registration licensure tracking and inspection program used to ensure that only duly licensed dealers sell firearms and that they comply with all applicable laws.

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Dangerous Weapons Licenses and Permits. State required fingerprint based firearms eligibility background check on persons authorized to possess dangerous weapons (e.g., machine guns, assault weapons grenades, etc.)

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Gun Manufacturers License. Licensing and inspection program for statewide firearms manufacturers.

Gun Show Promoter's License. Licensing/tracking program for gun show promoters.

Safe Handgun/Laboratory Testing. DOJ administered laboratory certification and handgun testing program to ensure that unsafe handguns are not manufactured/sold in the state.

Mental Health Firearms Prohibition Reports. Database entry, verification and maintenance of mental health reports submitted to DOJ by public/private statewide mental health facilities.

Superior Court Reports of Firearms Prohibition. Database entry, verification, and maintenance of superior court reports of mentally prohibited persons.

Law Enforcement Agency Tarasoff Reports of Firearms Prohibition. Database entry, verification, and maintenance of reports of persons who communicated to their psychotherapist a threat against themselves or others.

Juvenile Courts Reports of Firearms Prohibition. Database entry, verification and maintenance of juvenile courts reports

of violent firearms prohibited juvenile offenders.

Law Enforcement Gun Releases. Conduct firearms eligibility background checks on civilians on behalf of law enforcement agencies returning previously confiscated/stolen/lost firearms back to these individuals.

Firearms Dealer Acquisition Reports. AFS database update of mandatory reports submitted by gun dealers acknowledging the purchase/acquisition/receipt of a handgun from a private citizen.

Reports of No Longer in Possession of Firearms. AFS database

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update of reports submitted by private citizens noticing DOJ that they are no longer in possession of a firearm(s) that was previously registered with the Department.

Automated Firearms System. Maintain and conduct quality control of the statewide firearms of records entered into the system by local law enforcement agencies and the DOJ CJIS system. AFS is directly linked to the NCIC Gun File maintained by the FBI. AFS is available to law enforcement 24 hours a day, 7 days a week.

Database Audits Section. Conduct on-site audits on law enforcement agencies regarding the use of AFS and the Domestic Violence Restraining Order System.

Domestic Violence Restraining Order System (DVROS). Maintain and conduct quality control of DVROS; train law enforcement and criminal justice agencies on DVROS, restraining orders and the firearm prohibitions associated with each type of order; and monitor the forwarding of restraining order information to NCIS's Protection Order File.

Field Operations Section. Functions as liaison to California law enforcement agencies; conduct onsite training on information contained in AFS and DVROS; conducts terminal inspections.

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF FRESNO

I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On July 21, 2017, I served the foregoing document(s) described as

SUPPLEMENTAL DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF PLAINTIFFS' MOTION FOR ADJUDICATION OF FIFTH AND NINTH CAUSES OF ACTION

on the interested parties in this action by placing

- the original
- a true and correct copy

thereof by the following means, addressed as follows:

Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814
Anthony.Hakl@doj.ca.gov

X **(BY OVERNIGHT MAIL)** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on July 21, 2017, at Long Beach, California.

X **(BY ELECTRONIC MAIL)** As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on July 21, 2017, at Long Beach, California.

X **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


LAURA PALMERIN