

No. 24-542

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

KIM RHODE, ET AL.,
Plaintiffs and Appellees,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Defendant and Appellant.

**On Appeal from the United States District Court
for the Southern District of California**
No. 3:18-cv-00802-BEN-JLB
The Honorable Roger T. Benitez, Judge

**CIRCUIT RULE 28-2.7 ADDENDUM TO
APPELLANT'S OPENING BRIEF**

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May 24, 2024

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West's Annotated California Codes

Penal Code (Refs & Annos)

Part 6. Control of Deadly Weapons (Refs & Annos)

Title 4. Firearms (Refs & Annos)

Division 10. Special Rules Relating to Particular Types of Firearms or Firearm Equipment (Refs & Annos)

Chapter 1. Ammunition (Refs & Annos)

Article 2. Other Restrictions Relating to Ammunition (Refs & Annos)

West's Ann.Cal.Penal Code § 30312

§ 30312. Sale of ammunition through licensed ammunition vendor; requirements; exceptions; violation

Effective: October 14, 2017

Currentness

(a)(1) Commencing January 1, 2018, the sale of ammunition by any party shall be conducted by or processed through a licensed ammunition vendor.

(2) When neither party to an ammunition sale is a licensed ammunition vendor, the seller shall deliver the ammunition to a vendor to process the transaction. The ammunition vendor shall promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise. If the ammunition vendor cannot legally deliver the ammunition to the purchaser, the vendor shall forthwith return the ammunition to the seller. The ammunition vendor may charge the purchaser an administrative fee to process the transaction, in an amount to be set by the Department of Justice, in addition to any applicable fees that may be charged pursuant to the provisions of this title.

(b) Commencing January 1, 2018, the sale, delivery, or transfer of ownership of ammunition by any party may only occur in a face-to-face transaction with the seller, deliverer, or transferor, provided, however, that ammunition may be purchased or acquired over the Internet or through other means of remote ordering if a licensed ammunition vendor initially receives the ammunition and processes the transaction in compliance with this section and Article 3 (commencing with [Section 30342](#)) of Chapter 1 of Division 10 of Title 4 of this part.

(c) Subdivisions (a) and (b) shall not apply to the sale, delivery, or transfer of ammunition to any of the following:

(1) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale, delivery, or transfer is for exclusive use by that government agency and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency employing the purchaser or transferee is obtained, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency employing the individual.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with [Section 830](#)) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(3) An importer or manufacturer of ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with [Section 921](#)) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with [Section 28450](#)) of Chapter 6 of Division 6 of this title.

(5) A person whose licensed premises are outside this state and who is licensed as a dealer 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.

(6) A person who is licensed as a 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, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to [Section 26710](#).

(7) An ammunition vendor.

(8) A consultant-evaluator.

(9) A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

(10) A person who purchases or receives ammunition from a spouse, registered domestic partner, or immediate family member as defined in [Section 16720](#).

(11) A person enrolled in the basic training academy for peace officers or any other course certified by the Commission on Peace Officer Standards and Training, an instructor of the academy or course, or a staff member of the academy or entity providing the course, who is purchasing the ammunition for the purpose of participation or use in the course.

(d) A violation of this section is a misdemeanor.

Credits

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 6, operative Jan. 1, 2012. Amended by [Initiative Measure \(Prop. 63, § 8.6, approved Nov. 8, 2016, eff. Nov. 9, 2016\)](#); [Stats.2017, c. 783 \(A.B.693\)](#), § 3, eff. Oct. 14, 2017.)

Editors' Notes

VALIDITY

For validity of this section, see [Parker v. State \(App. 5 Dist. 2013\) 164 Cal.Rptr.3d 345, 221 Cal.App.4th 340](#), review granted and opinion superseded [167 Cal.Rptr.3d 658, 317 P.3d 1184](#), review dismissed [211 Cal.Rptr.3d 98, 384 P.3d 1242](#) and [Rhode v. Becerra, S.D.Cal.2020, 445 F.Supp.3d 902](#), order stayed [2020 WL 2049091](#), opinion issued [2020 WL 9938296](#).

LAW REVISION COMMISSION COMMENTS

2010 Addition

Subdivision (a) of Section 30312 continues the first sentence of former Section 12318(a) without substantive change.

Subdivision (b) continues former Section 12318(c) without substantive change.

Subdivision (c) continues the second sentence of former Section 12318(a) without substantive change.

See [Sections 16300](#) (“bona fide evidence of identity” or “bona fide evidence of majority and identity”), [16410](#) (“consultant-evaluator”), [16520](#) (“firearm”), [16650](#) (“handgun ammunition”), [16662](#) (“handgun ammunition vendor”). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

[Notes of Decisions \(17\)](#)

West's Ann. Cal. Penal Code § 30312, CA PENAL § 30312

Current with urgency legislation through Ch. 10 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes

Penal Code (Refs & Annos)

Part 6. Control of Deadly Weapons (Refs & Annos)

Title 4. Firearms (Refs & Annos)

Division 10. Special Rules Relating to Particular Types of Firearms or Firearm Equipment (Refs & Annos)

Chapter 1. Ammunition (Refs & Annos)

Article 2. Other Restrictions Relating to Ammunition (Refs & Annos)

West's Ann.Cal.Penal Code § 30314

§ 30314. Transportation of ammunition into the state by a resident;
delivery to licensed ammunition vendor; exceptions; violation

Effective: November 9, 2016

[Currentness](#)

(a) Commencing January 1, 2018, a resident of this state shall not bring or transport into this state any ammunition that he or she purchased or otherwise obtained from outside of this state unless he or she first has that ammunition delivered to a licensed ammunition vendor for delivery to that resident pursuant to the procedures set forth in [Section 30312](#).

(b) Subdivision (a) does not apply to any of the following:

(1) An ammunition vendor.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with [Section 830](#)) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(3) An importer or manufacturer of ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with [Section 921](#)) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with [Section 28450](#)) of Chapter 6 of Division 6.

(5) A person who is licensed as a 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, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to [Section 26710](#).

(6) A person who acquired the ammunition from a spouse, registered domestic partner, or immediate family member as defined in [Section 16720](#).

(c) A violation of this section is an infraction for any first time offense, and either an infraction or a misdemeanor for any subsequent offense.

Credits

(Added by Initiative Measure (Prop. 63, § 8.7, approved Nov. 8, 2016, eff. Nov. 9, 2016).)

Editors' Notes

VALIDITY

For validity of this section, see Rhode v. Becerra, S.D.Cal.2020, 445 F.Supp.3d 902, order stayed 2020 WL 2049091, opinion issued 2020 WL 9938296.

Notes of Decisions (19)

West's Ann. Cal. Penal Code § 30314, CA PENAL § 30314

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Chapter 1. Ammunition (Refs & Annos)

Article 3. Ammunition Vendors (Refs & Annos)

West's Ann.Cal.Penal Code § 30352

§ 30352. Information to be recorded upon delivery of ammunition; form;
electronic submission to department; persons authorized to purchase ammunition

Effective: September 23, 2021

[Currentness](#)

(a) Commencing July 1, 2019, an ammunition vendor shall not sell or otherwise transfer ownership of any ammunition without, at the time of delivery, legibly recording the following information on a form to be prescribed by the Department of Justice:

- (1) The date of the sale or other transfer.
- (2) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.
- (3) The brand, type, and amount of ammunition sold or otherwise transferred.
- (4) The purchaser's or transferee's full name and signature.
- (5) The name of the salesperson who processed the sale or other transaction.
- (6) The purchaser's or transferee's full residential address and telephone number.
- (7) The purchaser's or transferee's date of birth.

(b)(1) Commencing July 1, 2019, an ammunition vendor shall electronically submit to the department the information required by subdivision (a) for all sales and transfers of ownership of ammunition. The department shall retain this information in a database to be known as the Ammunition Purchase Records File. Except as provided in paragraph (2), this information shall remain confidential and may be used by the department and those entities specified in, and pursuant to, [subdivision \(b\) or \(c\) of Section 11105](#), through the California Law Enforcement Telecommunications System, only for law enforcement purposes. The ammunition vendor shall not use, sell, disclose, or share the information for any other purpose other than the submission required by this subdivision without the express written consent of the purchaser or transferee.

(2) The information collected by the department as provided in paragraph (1) shall be available to researchers affiliated with the California Firearm Violence Research Center at UC Davis following approval by the institution's governing institutional review board, when required. At the department's discretion, and subject to [Section 14240](#), the data may be provided to any other nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation for the study of the prevention of violence, following approval by the institution's governing institutional review board or human subjects committee, when required, for academic and policy research purposes. Material identifying individuals shall only be provided for research or statistical activities and shall not be transferred, revealed, or used for purposes other than research or statistical activities, and reports or publications derived therefrom shall not identify specific individuals. Reasonable costs to the department associated with the department's processing of that data may be billed to the researcher. If a request for data or letter of support for research using the data is denied, the department shall provide a written statement of the specific reasons for the denial.

(c) Commencing on July 1, 2019, only those persons listed in this subdivision, or those persons or entities listed in subdivision (e), shall be authorized to purchase ammunition. Prior to delivering any ammunition, an ammunition vendor shall require bona fide evidence of identity to verify that the person who is receiving delivery of the ammunition is a person or entity listed in subdivision (e) or one of the following:

(1) A person authorized to purchase ammunition pursuant to [Section 30370](#).

(2) A person who was approved by the department to receive a firearm from the ammunition vendor, pursuant to [Section 28220](#), if that vendor is a licensed firearms dealer, and the ammunition is delivered to the person in the same transaction as the firearm.

(d) Commencing July 1, 2019, the ammunition vendor shall verify with the department, in a manner prescribed by the department, that the person is authorized to purchase ammunition. If the person is not listed as an authorized ammunition purchaser, the vendor shall deny the sale or transfer.

(e) Subdivisions (a) and (d) shall not apply to sales or other transfers of ownership of ammunition by ammunition vendors to any of the following, if properly identified:

(1) An ammunition vendor.

(2) A person who is on the centralized list of exempted federal firearms licensees maintained by the department pursuant to Article 6 (commencing with [Section 28450](#)) of Chapter 6 of Division 6 of Title 4 of Part 6.

(3) A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

(4) A gunsmith.

(5) A wholesaler.

(6) A manufacturer or importer of firearms or ammunition licensed pursuant to Chapter 44 (commencing with [Section 921](#)) of Part I of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(7) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer of ownership is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed.

(8)(A) A properly identified sworn peace officer, as defined in Chapter 4.5 (commencing with [Section 830](#)) of Title 3 of Part 2, or properly identified sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(B)(i) Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a full-time paid peace officer who is authorized to carry a firearm in the course and scope of the officer's duties.

(ii) The certification shall be delivered to the vendor at the time of purchase or transfer and the purchaser or transferee shall provide bona fide evidence of identity to verify that the purchaser transferee is the person authorized in the certification.

(iii) The vendor shall keep the certification with the record of sale and submit the certification to the department.

(f) The department is authorized to adopt regulations to implement the provisions of this section.

Credits

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 6, operative Jan. 1, 2012. Amended by Initiative Measure (Prop. 63, § 8.13, approved Nov. 8, 2016, eff. Nov. 9, 2016); [Stats.2016, c. 55 \(S.B.1235\)](#), § 12, eff. Jan. 1, 2017; [Stats.2021, c. 253 \(A.B.173\)](#), § 11, eff. Sept. 23, 2021.)

Editors' Notes

VALIDITY

For validity of this section, see [Parker v. State \(App. 5 Dist. 2013\) 164 Cal.Rptr.3d 345, 221 Cal.App.4th 340](#), review granted and opinion superseded [167 Cal.Rptr.3d 658, 317 P.3d 1184](#), review dismissed [211 Cal.Rptr.3d 98, 384 P.3d 1242](#) and [Rhode v. Becerra, S.D.Cal.2020, 445 F.Supp.3d 902](#), order stayed [2020 WL 2049091](#), opinion issued [2020 WL 9938296](#).

LAW REVISION COMMISSION COMMENTS

2010 Addition

Subdivision (a) of Section 30352 continues former Section 12061(a)(3) without substantive change.

Subdivision (b) continues former Section 12061(b) without substantive change.

See Sections 16520 (“firearm”), 16630 (“gunsmith”), 16650 (“handgun ammunition”), 16662 (“handgun ammunition vendor”), 17315 (“vendor”), 17340 (“wholesaler”). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (14)

West's Ann. Cal. Penal Code § 30352, CA PENAL § 30352

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 Chapter 1. Ammunition (Refs & Annos)
 Article 3. Ammunition Vendors (Refs & Annos)

West's Ann.Cal.Penal Code § 30365

§ 30365. Penalty for record keeping violations; construction of section in relation to other laws

Effective: January 1, 2012

[Currentness](#)

(a) A violation of [Section 30352](#), [30355](#), [30360](#), or [30362](#) is a misdemeanor.

(b) 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.

Credits

(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

VALIDITY

For validity of this section, see Parker v. State (App. 5 Dist. 2013) 164 Cal.Rptr.3d 345, 221 Cal.App.4th 340, review granted and opinion superseded 167 Cal.Rptr.3d 658, 317 P.3d 1184, review dismissed 211 Cal.Rptr.3d 98, 384 P.3d 1242 and Rhode v. Becerra, S.D.Cal.2020, 445 F.Supp.3d 902, order stayed 2020 WL 9938296.

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 30365 continues former Section 12061(c) without substantive change. [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (4)

West's Ann. Cal. Penal Code § 30365, CA PENAL § 30365

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West's Annotated California Codes

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Title 4. Firearms (Refs & Annos)

Division 10. Special Rules Relating to Particular Types of Firearms or Firearm Equipment (Refs & Annos)

Chapter 1. Ammunition (Refs & Annos)

Article 4. Ammunition Purchase Authorizations (Refs & Annos)

West's Ann.Cal.Penal Code § 30370

§ 30370. Electronic approval of purchase or transfer of ammunition by department; determination of eligibility of purchaser or transferee; development of approval procedure for single ammunition transaction or purchase; provision of ammunition by vendor without approval prohibited; transaction fee; Ammunition Safety and Enforcement Special Fund; regulations

Effective: January 1, 2024

[Currentness](#)

(a) Commencing July 1, 2019, the department shall electronically approve the purchase or transfer of ammunition through a vendor, as defined in [Section 16151](#), except as otherwise specified. This approval shall occur at the time of purchase or transfer, prior to the purchaser or transferee taking possession of the ammunition. Pursuant to the authorization specified in [paragraph \(1\) of subdivision \(c\) of Section 30352](#), the following persons are authorized to purchase ammunition:

(1) A purchaser or transferee whose information matches an entry in the Automated Firearms System (AFS) and who is eligible to possess ammunition as specified in subdivision (b).

(2) A purchaser or transferee who has a current certificate of eligibility issued by the department pursuant to [Section 26710](#).

(3) A purchaser or transferee who is not prohibited from purchasing or possessing ammunition in a single ammunition transaction or purchase made pursuant to the procedure developed pursuant to subdivision (c).

(b) To determine if the purchaser or transferee is eligible to purchase or possess ammunition pursuant to paragraph (1) of subdivision (a), the department shall cross-reference the ammunition purchaser's or transferee's name, date of birth, current address, and driver's license or other government identification number, as described in [Section 28180](#), with the information maintained in the AFS. If the purchaser's or transferee's information does not match an AFS entry, the transaction shall be denied. If the purchaser's or transferee's information matches an AFS entry, the department shall determine if the purchaser or transferee falls within a class of persons who are prohibited from owning or possessing ammunition by cross-referencing with the Prohibited Armed Persons File. If the purchaser or transferee is prohibited from owning or possessing a firearm, the transaction shall be denied.

(c) The department shall develop a procedure in which a person who is not prohibited from purchasing or possessing ammunition may be approved for a single ammunition transaction or purchase. The department shall recover the cost of processing and regulatory and enforcement activities related to this section by charging the ammunition transaction or purchase applicant a fee

not to exceed the fee charged for the department's Dealers' Record of Sale (DROS) process, as described in [Section 28225](#), as it read on December 31, 2019, and not to exceed the department's reasonable costs.

(d) A vendor is prohibited from providing a purchaser or transferee ammunition without department approval. If a vendor cannot electronically verify a person's eligibility to purchase or possess ammunition via an internet connection, the department shall provide a telephone line to verify eligibility. This option is available to ammunition vendors who can demonstrate legitimate geographical and telecommunications limitations in submitting the information electronically and who are approved by the department to use the telephone line verification.

(e) The department shall recover the reasonable cost of regulatory and enforcement activities related to this article by charging ammunition purchasers and transferees a per transaction fee not to exceed one dollar (\$1), provided, however, that the Attorney General may adjust the fee as needed pursuant to this section, not to exceed the reasonable regulatory and enforcement costs for operating the program related to this article.

(f) A fund to be known as the "Ammunition Safety and Enforcement Special Fund" is hereby created within the State Treasury. All fees received pursuant to this section shall be deposited into the Ammunition Safety and Enforcement Special Fund and, notwithstanding [Section 13340 of the Government Code](#), are continuously appropriated for purposes of implementing, operating, and enforcing the ammunition authorization program provided for in this section and [Section 30352](#) and for repaying the start-up loan provided for in [Section 30371](#).

(g) The Department of Justice is authorized to adopt regulations to implement this section.

Credits

(Added by [Stats.2016, c. 55 \(S.B.1235\)](#), § 15, eff. Jan. 1, 2017. Amended by [Stats.2023, c. 190 \(S.B.135\)](#), § 11, eff. Sept. 13, 2023; [Stats.2023, c. 249 \(S.B.2\)](#), § 30.5, eff. Jan. 1, 2024.)

Editors' Notes

VALIDITY

For validity of this section, see [Rhode v. Becerra, S.D.Cal.2020, 445 F.Supp.3d 902, order stayed 2020 WL 9938296](#).

Notes of Decisions (16)

West's Ann. Cal. Penal Code § 30370, CA PENAL § 30370

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