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December 16, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to firearms and ammunition (A.G. File No. 15-0098, Amendment #1).

BACKGROUND

Prohibitions on Firearm and Ammunition Ownership. Under federal and state law, certain individuals are prohibited from owning or possessing firearms. Such “prohibited persons” include individuals convicted of felonies and certain misdemeanor violations (such as assault or battery), as well as those found by a court to be a danger to themselves or others due to mental illness. In California, individuals prohibited from owning firearms are also prohibited from owning ammunition.

Regulation of Firearm Sales. Federal law includes various regulations related to firearms sales, including the licensing of firearms dealers. Dealers must request background checks from the National Instant Criminal Background Check System (NICS) of individuals seeking to purchase firearms. The NICS searches a number of national databases to ensure that the purchaser is not a prohibited person. As permitted by federal law, California is one of 13 states that chose to receive all requests from firearms dealers, allowing the state to search NICS and various state databases to ensure that individuals seeking to purchase or receive firearms are not prohibited. In addition, the California Department of Justice (DOJ) maintains a database that matches the state’s prohibited persons list against the state’s list of firearm ownership and purchases. Agents from DOJ are authorized to seize firearms from those prohibited persons who are identified as owning firearms. This is often done to remove firearms from individuals who become prohibited after legally purchasing them. Other state regulations related to firearms include limits on the type of firearms that can be purchased, a ten-day waiting period before a dealer may transfer a firearm to a purchaser, and requirements for recording and reporting firearms purchases. Fees charged to firearms vendors and purchasers generally offset DOJ’s costs to regulate firearm sales.

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Regulation of Ammunition Sales. Federal and state laws generally do not regulate ammunition sales in the same manner as firearm sales. However, there are some state regulations that apply to ammunition in general. For example, since 2000, state law has banned the manufacture, sale, or transfer of large capacity magazines, which are generally defined as an ammunition feeding device with a capacity to hold more than ten rounds. However, individuals who possessed large capacity magazines before 2000 were allowed to keep them for their own use.

PROPOSAL

This measure increases state regulation of firearms and ammunition. Specifically, the measure proposes to (1) regulate all ammunition sales in a manner similar to firearm sales, (2) implement a court process to ensure certain offenders surrender their firearms at the time of their conviction, (3) expand the existing ban on large capacity magazines, and (4) impose various other requirements.

Regulation of Ammunition Sales

This measure regulates all ammunition sales in a manner similar to firearm sales. The measure defines ammunition as “one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles.”

Ammunition Vendor Licenses. Under the measure, vendors must obtain a one-year ammunition vendor license from DOJ to sell more than 500 rounds of ammunition in a 30-day period. In order to obtain a license, vendors would need to meet a number of requirements, such as not being a prohibited person and meeting certain other federal, state, or local government requirements. Firearm dealers complying with existing federal and state licensing requirements related to firearms would be automatically deemed licensed ammunition vendors. Failure to comply with the licensing requirements would be a misdemeanor, punishable by a fine and/or county jail. The measure authorizes DOJ to charge a licensing fee to support its costs to administer and enforce the above licensing requirements.

Ammunition Purchase Authorizations. The measure also requires an individual seeking to purchase ammunition to obtain a four-year ammunition purchase authorization from DOJ beginning in July 2019. In order to receive such authorization, the individual must be 18 or over and not a prohibited person. In addition, ammunition vendors would be required to verify with DOJ that an individual has an ammunition purchase authorization before completing a transaction. The measure also requires ammunition vendors to collect and submit specified information—such as the date of the transaction, the purchasers’ identification information, and the type of ammunition purchased—to DOJ for retention in a centralized database for law enforcement purposes. The measure authorizes DOJ to charge a fee from individuals seeking an ammunition purchase authorization to support its costs for administering and enforcing the above requirements. The measure limits the fee to \$50 per person, but allows the fee to be adjusted annually for inflation.

Other Requirements. The measure also includes a number of other regulatory requirements related to ammunition. For example, the measure requires that nearly all ammunition sales

(including Internet and out-of-state purchases) be conducted through a licensed ammunition vendor beginning in 2018. In addition, firearms dealers and ammunition vendors must require employees who handle, sell, or deliver firearms or ammunition to obtain and provide certification from DOJ demonstrating that they are not a prohibited person. Finally, ammunition vendors who sell to an individual who they know or have cause to believe is obtaining the ammunition on behalf of a prohibited person would be guilty of an infraction (punishable by a fine) or misdemeanor (punishable by a fine and/or imprisonment in county jail).

Removal of Firearms From Prohibited Persons

This measure includes various provisions intended to ensure that individuals convicted of offenses that prohibited them from owning firearms surrender their firearms at the time of their conviction. For example, beginning 2018, the measure requires trial courts to inform offenders that they must surrender firearms to local law enforcement, sell firearms to a licensed firearms dealer, or transfer the firearms to a licensed firearms dealer for storage. The measure also requires the trial court to assign a probation officer to report on whether the offender complied with all relinquishment requirements. If the court finds that the offender failed to comply within 14 days of sentencing, it is then required to order the search and removal of any firearms at locations where there is probable cause to believe the firearms are located. Finally, the measure authorizes local government or state agencies to charge a fee to reimburse its costs related to the seizure, impounding, storage, or release of a firearm.

Ban on Large Capacity Magazines

This measure prohibits the possession of any large capacity magazine by most individuals beginning in July 2017. Individuals currently in possession of such magazines would be required to (1) remove the magazine from the state, (2) sell the magazine to a licensed firearms dealer, or (3) surrender the magazine to law enforcement for destruction. Individuals who do not comply would be guilty of an infraction (punishable by a fine) or misdemeanor (punishable by a fine and/or imprisonment in county jail).

Other Provisions

Reporting Requirements. The measure includes a number of reporting requirements related to firearms and ammunition. For example, the measure requires that ammunition vendors report the loss or theft of ammunition within 48 hours, as is currently required for the reporting of lost or stolen firearms by firearm dealers. Beginning July 2017, the measure also requires that most individuals report the loss or theft of a firearm to local law enforcement within five days. An individual who fails to make such a report (or knowingly submits a false report) would be guilty of an infraction (punishable by a fine) or misdemeanor (punishable by a fine and/or imprisonment in county jail). The measure also requires that local law enforcement update the appropriate statewide databases when firearms are reported lost or stolen or when firearms are relinquished to them. This measure also requires DOJ to submit the name, date of birth, and physical description of any person prohibited from possessing a firearm under federal or state law to NICS.

Theft of Firearms. Finally, the measure includes provisions related to the theft of firearms. Under current law, theft of firearms worth \$950 or less is generally a misdemeanor crime punishable by up to one year in county jail. Under this measure, theft of any firearm, regardless of its value, would be a felony crime punishable by up to three years in state prison. Additionally, individuals convicted of a misdemeanor for the theft of a firearm, such as those convicted before the measure goes into effect, would be prohibited from owning firearms for ten years.

FISCAL EFFECTS

Increased State Regulatory Costs. This measure would result in increased state costs to support the new regulatory responsibilities being required of DOJ, such as the licensing of ammunition vendors and processing of ammunition purchase authorizations. Some of these costs would be on a one-time basis (such as for the development of new databases to track vendor licenses) and others would be ongoing (such as for staff to process applications and seize ammunition from prohibited persons). We estimate that these costs would likely be in the tens of millions of dollars annually. These costs would likely be offset by the various regulatory fees authorized in the measure.

Increased Court and Law Enforcement Costs. The provisions of the measure requiring removal of firearms from prohibited persons would result in increased workload for state and local governments. For example, state trial courts would likely experience increased workload due to additional responsibilities. In addition, state and local law enforcement would have new workload related to removing firearms from offenders who fail to surrender them as part of court proceedings. The total magnitude of the costs associated with the above workload is unknown, but would unlikely exceed the tens of millions of dollars annually. Actual costs would depend on how this measure was implemented, such as the extent to which existing resources are reprioritized to accommodate the required workload. Additionally, to the extent that local governments and state agencies charge and collect fees to support their costs as authorized by this measure, some of the increased costs would be offset.

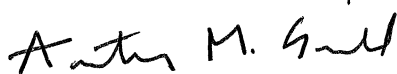
Potential Increased Correctional Costs. The new and increased penalties related to firearms and ammunition that are authorized in this measure could result in increased correctional costs to state and local governments. For example, the state and counties could incur additional costs to house individuals in prison and jail. The magnitude of the increased correctional costs would depend primarily on the number of violations and how the provisions of the measure are enforced. Thus, the potential increase in state and local correctional costs is unknown, but would unlikely exceed the low millions of dollars annually.

Other Fiscal Effects. To the extent that the changes in this measure have an effect on the incidence of firearm-related crimes or injuries in California, the measure could affect state and local government expenditures. Additionally, depending on how the provisions of this measure are enforced, the measure could potentially result in increased state and local revenues from the collection of fines associated with the new and increased penalties authorized by this measure.

Summary of Fiscal Effects. We estimate that this measure would have the following major effects.

- Increased state costs in the tens of millions of dollars annually related to regulating ammunition sales, likely offset by various regulatory fees authorized by the measure.
- Increase in court and law enforcement costs, not likely to exceed the tens of millions of dollars annually, related to removing firearms from prohibited persons as part of court sentencing proceedings. These costs could be offset to some extent by fees authorized by the measure.
- Potential increase in state and local correctional costs, not likely to exceed the low millions of dollars annually, related to new and increased penalties.

Sincerely,

for 

Mac Taylor
Legislative Analyst



Michael Cohen
Director of Finance