

Case No. 20-55437

In the United States Court of Appeals
for the Ninth Circuit

KIM RHODE, et al.
Plaintiffs-Appellees,

v.

XAVIER BECERRA, in his official capacity as Attorney General of the State of
California,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of California
(18-cv-00802-BEN-JLB)

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INTRODUCTION

California has adopted an ill-conceived, alone-in-the-nation ammunition background check scheme that deems the State's own state-issued identification insufficient and, by the State's own telling, arbitrarily precludes law-abiding citizens from obtaining ammunition more than 15% of the time. Indeed, it is undisputed that tens of thousands of law-abiding Californians have been stymied in their efforts to purchase lawful ammunition as a result of this regime. On top of that, the regime facially discriminates against out-of-state ammunition vendors and impermissibly regulates transactions that take place entirely outside of California. The district court plainly did not abuse its discretion in enjoining this novel and constitutionally dubious regime while definitively evaluating the constitutional concerns it raises.

First, the district court did not abuse its discretion in concluding that California's new regime likely runs afoul of the Second Amendment. The regime is a direct restriction on all means of acquiring the ammunition necessary to exercise the right to keep and bear arms, and the regime has made it exceedingly (and unnecessarily) difficult for law-abiding Californians to purchase ammunition—indeed, so burdensome that it is undisputed that tens of thousands of law-abiding Californians have tried and failed to exercise their rights.

There is (if possible) even less reason to disturb its conclusion that the State's novel regime likely violates the Commerce Clause. As the State concedes, state laws that discriminate against interstate commerce or regulate extraterritorial conduct are virtually *per se* invalid. Indeed, the only regimes even analogous to California's ammunition regulation scheme are some states' approach to alcohol distribution and it

took the 21st Amendment to justify such rampant discrimination against interstate commerce. The district court's tentative conclusion that California's regime is unconstitutional on this ground is unassailable, and certainly not an abuse of discretion.

The district court thus acted well within its discretion in deciding to hit the pause button while it fully and finally resolves these weighty constitutional issues. Indeed, if any other constitutional right were at stake, this would be an open and shut case. Imagine, for instance, if a state were to adopt a voter identification law under which all would-be voters must, upon arriving at the polling place, affirmatively prove their citizenship and undergo a background check to make sure they are not disenfranchised felons before they could exercise their fundamental right to vote. Imagine further that the state was unwilling to accept its own standard-issued identification as proof of citizenship. Then imagine that even as to those would-be voters who were fortunate enough to have the necessary identification on hand, the State rejected more than 15% of duly qualified voters owing merely to trivial clerical discrepancies in the state's records. And on top of all that, imagine that the state put the onus on the would-be voter to correct the issues with the state's records, but did not disclose exactly what those issues were.

The notion that a court would abuse its discretion by preliminarily enjoining such a novel and burdensome regime until its constitutionality could be fully assessed would be a complete non-starter. The result should not differ just because a different constitutional right is at stake. Whether the State can turn the tide is a question to be resolved on a full record. But particularly given that the State bears the ultimate

burden of proof on both of these constitutional issues, and its own evidence only highlighted the constitutional difficulties, the preliminary injunction was amply justified and far from an abuse of discretion.

STATEMENT OF JURISDICTION

Plaintiff-Appellees agree with Appellant’s jurisdictional statement. *See* Dkt.14 at 14.

STATEMENT OF THE ISSUE

Whether the district court abused its discretion by preliminarily enjoining California’s exceedingly burdensome and first and only of its kind regime for regulating ammunition transactions.

STATEMENT REGARDING ADDENDUM

Except for the following, all applicable constitutional provisions, statutes, and regulations are contained in the Appellant’s addendum: Cal. Pen. Code §§ 16151, 30300-30310, 30315-30350, 30355-30363, 30371-30395; Cal. Code Regs. tit. 11, §§ 4045.1, 4260-4309, 4350-4353.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

In 2016, California enacted a novel ammunition regime that was the product of legislation and a voter initiative. E.R.VI 1366-1417; *see also* Cal. Pen. Code §§ 30300-30395. Under that new regime, with few exceptions, “the sale of ammunition by any party must be conducted by or processed through a licensed ammunition vendor.” *Id.* § 30312(a)(1). Anyone wishing to sell ammunition must either have an “ammunition vendor license” from the California Department of Justice (“DOJ”), or be a California

licensed firearm dealer (collectively, “Vendors”). *Id.* §§ 16151, 30342, 30385(d). To obtain such a license, a seller must have a physical presence in California. *See* Cal. Code Regs. tit. 11, § 4260.

With few exceptions, all ammunition transactions must occur “face-to-face” with the seller and buyer physically present. Cal. Penal Code § 30312(b). When neither party to an ammunition sale is a Vendor, the seller must “deliver the ammunition to a [V]endor to process the transaction,” who will “deliver the ammunition to the purchaser, if the sale is not prohibited.” *Id.* § 30312(a)(2). Thus, while ammunition may still be purchased “over the internet or through other means of remote ordering,” the purchaser cannot take possession of the ammunition until “a Vendor initially receives the ammunition and processes the transaction.” *Id.* § 30312(b). Because that face-to-face transaction must occur at a Vendor’s physical location *in California*, a California resident generally cannot bring into California any ammunition acquired outside of the state; it must be shipped to a Vendor in California to process. *Id.* § 30314(a)-(b).

Vendors may charge a fee to process any third-party seller transaction. *Id.* § 30312(c). “If the purchaser will be present for immediate delivery of the ammunition, the fee shall not exceed five dollars (\$5).” Cal. Code Regs. tit. 11, § 4263(a). “If the purchaser will not be present for immediate delivery of the ammunition, the vendor may charge an additional storage fee as agreed upon with the purchaser prior to the vendor receiving the ammunition.” *Id.* § 4263(b). There is no cap on what Vendors can charge purchasers who are not present for immediate delivery, which, as a practical matter, will almost always be the case for transactions originating out-of-

state. And Vendors may refuse to process third-party transactions at all, whether they originate from out-of-state sellers or from Californians simply seeking to ship home ammunition they acquired elsewhere. E.R.VII 1564; *see also* Cal. Pen. Code § 30312(a). In-state Vendors thus have veto power over ammunition transactions originating with their out-of-state competitors. Unsurprisingly, out-of-state transactions have suffered considerably under that regime. E.R.VI 1550-51, 1554-55.

A. DOJ Approval for Ammunition Transactions

Under California's new regime, purchasers cannot take possession of ammunition they purchase unless DOJ electronically approves the sale. Cal. Pen. Code § 30370(a). Only a California Vendor may process a request for that approval. Cal. Code Regs. tit. 11, §§ 4302(c), 4303(c), 4305(c); Cal. Pen. Code § 30370. There are four types of requests a Vendor may submit. Cal. Code Regs. tit. 11, §§ 4302-4305. DOJ provides no formal guidance to purchasers at the point of sale on which of the various options to try or on the forms of identification necessary. E.R.V 1052. Nor has DOJ provided any formal instruction to Vendors on how to advise prospective customers which option to use. E.R.V 1052. Instead, that information is buried on DOJ's website. E.R.VI 1260-67. Even if a purchaser is fortunate enough to understand how California's convoluted new scheme works, securing approval requires running a formidable gauntlet.

1. Proof of Lawful Presence in the U.S.

Before purchasers can even begin the process, they must present identification proving they are lawfully present in the United States. Cal. Code Regs. tit. 11, § 4045.1(a)-(b). Because that demonstration is unnecessary to obtain California's

standard-issue driver license or identification card, California will not accept those documents as sufficient to process an ammunition transaction. *Id.* § 4045.1. Absent supplemental documentation, California will accept only an identification that does not bear the designation “FEDERAL LIMITS APPLY” (in other words, an ID meeting the requirements of the federal REAL ID Act of 2005). *Id.* California issues FLA IDs as proof of both identity and residence, and it accepts FLA IDs as sufficient for virtually all other purposes. *See* A.O.B. 9 n. 3. And the federal government accepts FLA IDs as sufficient to undergo a background check to purchase *a firearm*. E.R.VII 1590-92. But because California issues FLA IDs to individuals without regard to whether they are lawfully present, it will not even process a request to purchase ammunition if the purchaser presents only an FLA ID. A.O.B. 9.

Instead, such a purchaser must present additional documentation, such as a valid U.S. passport or certified copy of a U.S. birth certificate. Cal. Code Regs. tit. 11, § 4045.1(b). Obtaining that documentation can be time consuming and costly. E.R.I 16-18. Moreover, even if people have such additional proof on hand when they endeavor to purchase ammunition, should that documentation not match *precisely* the information on their FLA ID, *further* documentation must be provided explaining the discrepancy. Cal. Code Regs. tit. 11, § 4045.1(c).

California’s refusal to accept its own standard-issue ID has predictably caused considerable confusion. Vendors have reported turning away up to half of their customers in a day for lacking sufficient ID. E.R.VI 1501-02.

2. Background Check Options

If purchasers overcome the ID hurdle, Vendors collect their personal information by swiping their acceptable form of identification through a magnetic strip reader that populates the relevant fields in DOJ's Dealer Record of Sale Entry System ("DES"). E.R.V 1242; Cal. Code Regs. tit. 11, §§ 4302(c), 4303(c). What happens next depends on which of the four background check options the purchaser selects.

a. "Standard Check"

The Standard Ammunition Eligibility Check is the quickest and cheapest way to secure DOJ approval. It costs \$1 and averages several minutes to process. E.R.V. 1241; Cal. Code Regs. tit. 11, § 4302(b). Likely for that reason, the overwhelming majority of people choose this option, E.R.II 241—albeit often to no avail.

To run a Standard Check, DOJ first determines whether the purchaser's information matches an entry in its Automated Firearm System ("AFS") database. AFS contains firearm sales, transfers, and ownership records maintained by DOJ. A.O.B. 11-12. If it does not match, then the transaction is rejected. DOJ will not find a match unless all of the information the purchaser provides is an *exact* match to information in AFS. E.R.II 291. Accordingly, if any of a purchaser's information has changed since she last purchased or reported possession of a firearm (e.g., her last name or address), the transaction will be rejected. A "rejection" due to the absence of a match to a record in AFS "is not a determination that the purchaser is ineligible to purchase ammunition," E.R.II 242, but it nonetheless precludes the transaction from going forward.

If DOJ finds a match in AFS, then it will check if there is also a match in its Armed Prohibited Persons File (“APPS”), which is the database DOJ uses to track persons who are prohibited from possessing firearms, such as felons. Cal. Code Regs. tit. 11, § 4302(d); Cal. Pen. Code § 30000(a); *see also* Cal. Code Regs. tit. 11, § 4301(m). If the purchaser’s information both *does* match an entry in AFS and *does not* match an entry in APPS, DOJ will approve the transaction. Cal. Code Regs. tit. 11, § 4302(a). That approval is valid for only 18 hours. E.R.V 1252. If DOJ finds a match in APPS, the person will be denied.

According to the State, of the 616,257 Standard Checks processed between July 2019 and January 2020, only 188 (or 0.03%) were denied because the purchaser was on APPS. E.R.II 241, 255. But a whopping 101,047—approximately 16.4%—were rejected for mundane things like name, date of birth, address, and ID number mismatches (or some combination thereof) in AFS, or an AFS entry that is “no longer valid.” E.R.II 241, 256-60.¹ Of those 101,047 Standard Checks that were rejected for reasons unrelated to being a prohibited person, the State reports that 65,753 (65.08%) of those individuals have not been able to purchase ammunition to date.

That is unsurprising, as fixing whatever prompted DOJ to reject the check can be a herculean task. If DOJ rejects a transaction, the Vendor must provide the person with a copy of the attempted transaction with the words “DENY/REJECT” and a “DROS NUMBER” printed at the top. E.R.V 1245. While nothing on that document informs its recipient as much, that DROS number doubles as an Ammunition

¹ “Invalid” AFS records can result from a person no longer owning a firearm. E.R.II 243.

Transaction Number (“ATN”). Cal. Code Regs. tit. 11, § 4302(e). According to DOJ, the ATN can then be used “to obtain the reason for the rejection through DOJ’s ‘CFARS website.’” *Id.* But unless prompted by the vendor, nothing directs rejected purchasers to go to CFARS. E.R.II 171-73. Moreover, CFARS does not provide the *specific* reason for rejection. It merely provides a boilerplate statement that the rejection was “for one of the following reasons: 1) you do not have an AFS record or 2) the information you provided to the ammunition vendor does not match the AFS record that is on file.” *Id.*; *see also* E.R.II 310-11.

That is unhelpful because there are two very different solutions for those two issues. Individuals who already lawfully own a firearm may create a new AFS record by the relatively straightforward process of submitting a “Firearm Ownership Report” and \$19 fee to DOJ. *See* E.R.VI 1261-62. Of course, that requires awareness of this option, and DOJ does not directly inform them of it. What is more, individuals have reported significant difficulties with this process, including DOJ erroneously rejecting their applications. *See* E.R.II 313-17.

But, ironically, a mismatched AFS record can be more difficult to fix than not having one at all. First, DOJ never tells purchasers whether they even have an AFS record, let alone what information in their AFS record is causing the problem. They must “glean” the problem themselves. E.R.I 171-72. And updating existing AFS records is not necessarily a simple task. One must create a CFARS account and provide personal information *exactly* “as it was, at the time when a firearm was purchased or transferred into his or her ownership, as reported to” DOJ, as well as current name, address, zip code, date of birth, and identification type and number.

Cal. Code Regs. tit. 11, §§ 4351, 4353(b)-(c). One must also provide specific information about the firearm, including its make, model, caliber, serial number, and/or type. *Id.* § 4353(d).

California does not require residents to keep records of their firearm acquisitions, so many individuals who have sought to update existing AFS records have reported difficulties in doing so, because they lack the information DOJ requires. *See* E.R.VII 1559. Individuals may request a copy of their existing AFS records from DOJ. E.R.VI 1317. But that request must be notarized, and has taken DOJ as long as 110 days to process. E.R.I 25; E.R.II 322. Someone whose first effort to purchase ammunition through a Standard Check was rejected thus could find herself waiting months before she can even try to fix the problem.

Once she identifies the problem, any updates or corrections to her name, date of birth, identification type and/or number require sufficient documentation verifying the change:

- A change of name requires uploading a copy of a marriage license, or an endorsed court order regarding restoration or change of a name;
- A change to the date of birth requires a copy of a birth certificate; and,
- A change to the ID type or number requires uploading a California Driver's License, ID, or out-of-state Driver's License.

Cal. Code Regs. tit. 11, § 4353(f)(1)-(3).

Although DOJ claims it can take as little as 10 minutes to update an AFS record, that ignores how long it takes individuals to prepare a request, and how long it takes DOJ to process it. E.R.II 339; *see also* E.R.IV 949. On top of the months it may

take to even figure out what the problem with the AFS record is, individuals have reported that it takes at least a week for DOJ to process requests (assuming there are no issues with the submission). E.R.II 310-11. And all of that just to prove to the State that they are “qualified” to exercise a fundamental constitutional right.

b. “Basic Check”

California residents lacking an AFS record may use what DOJ calls the Basic Ammunition Eligibility Check option, which costs \$19. *See* Cal. Code Regs. tit. 11, § 4303(a)(2). The State does not dispute that this fee can dwarf the cost of the ammunition itself. *See* E.R.VII 1744.

To process a Basic Check, DOJ runs the purchaser’s acceptable form of identification against DMV records to confirm the information matches a valid ID, and then consults four state databases to determine if the purchaser is prohibited from owning or possessing ammunition. E.R.II 287; *see also* Cal. Code Regs. tit. 11, § 4301(e). If that database search comes back clean, the person is approved.

Unlike the Standard Check, which (if not rejected at the threshold owing to immaterial “discrepancies”) typically takes only a matter of minutes, Basic Checks take “an average of one to three days to complete” and thus “often require two trips to the vendor.” A.O.B. 10-11. Vendors must provide purchasers with an ATN “to monitor the status.” Cal. Code Regs. tit. 11, § 4303(c)-(d). Once complete, DOJ will inform the Vendor whether the transaction is approved. *Id.* § 4303(e).

While approval for a Basic Check is valid for 30 calendar days, E.R.V 1252, that approval can still be used for only one transaction. Purchasers must pay another \$19

and go through the same multiple-day wait each time they wish to purchase ammunition via a Basic Check. A.O.B. 8; Cal. Code Regs. tit. 11, § 4303(b), (d)(1).

The Basic Check option is considerably less popular, likely given the additional time and expense it entails. DOJ reports that it processed 19,599 Basic Checks (as compared to 616,257 Standard Checks) between July 2019 and January 2020. E.R.II 238, 241, 251, 255. Of those 19,599 checks, 572 were denied because the purchasers were identified as prohibited persons, and another 342 (or approximately 1.75%) were rejected. E.R.II 251. Of those, DOJ reports that 107 were rejected because the person's ID did not match DMV records. *Id.* The remaining 235 were rejected because DOJ's records regarding the person's criminal history were "incomplete." E.R.II 238, 251; *see also* Cal. Penal Code § 30370(a)(3). Accordingly, simply because it could not definitively conclude whether those people were prohibited, DOJ treated them as if they were. *Id.*

c. Firearms Eligibility Check

Individuals purchasing a firearm from a California FFL may also purchase ammunition in connection with the firearm purchase. Cal. Code Regs. tit. 11, § 4304. For this option, a purchaser "shall only pay the fee for the firearms eligibility check." *Id.* § 4304(b). But if the purchaser wants to take possession of ammunition before completion of the 10-day firearms eligibility check, she must use one of the other options. *Id.* § 4304(c).

d. COE Verification Process

Individuals may also use a DOJ-issued Certificate of Eligibility ("COE"), which allows Vendors to verify their eligibility to purchase ammunition with DOJ at a cost

of \$1. *Id.* § 4305. To obtain a COE, one must apply via CFARS. E.R.VI 1334. The application process “includes a firearms eligibility criminal background check” following the submission of the applicant’s fingerprints through a Live Scan. *Id.* Applicants must pay a whopping \$71 fee to DOJ to submit an application, and must also pay any fee charged by the Live Scan Operator for the fingerprint submission. *Id.* Once issued, a COE is valid for only one year, but can be renewed annually for a \$22 fee. *Id.* Like a Standard Check, a COE verification is only valid for 18 hours and a single purchase. E.R.V 1252.

The State has not provided statistics for COE Verifications for the same period as the other types of checks. It did, however, report that in July 2019, it processed 880 COE Verifications, 112 of which (12.72%) were denied or rejected. E.R.IV 955. The State provided no explanation for why this route had such a high rejection rate but it is suspect in light of the requirements to obtain a COE.

B. Registration

All ammunition sales are electronically recorded with DOJ at the time of delivery, including: (1) the date of transfer, (2) the transferee’s ID number and the state in which it was issued, residential address and telephone number, date of birth, and full name; (3) the brand, type, and amount of ammunition being sold or transferred; and (4) the name of the salesperson. Cal. Penal Code § 30352(a)(1)-(7). DOJ also requires the dealer to print a copy of the transaction and have the customer sign it. E.R.V 1250, 1252.

* * *

In sum, of the 635,936 transactions between July 2019 and January 2020 for which the State was able to provide data, a mere 760 were denied as prohibited persons, while there were 101,501 rejections for reasons having nothing to do with “eligibility” to exercise their Second Amendment rights. The State’s system thus had a false positive rate of nearly 16%, in service of identifying roughly 0.12% of potentially unlawful transactions. And even those figures are generous to the State, as so far at least 16 individuals (representing a 2.71% error rate) were found to have been *wrongly* considered prohibited upon closer examination, while untold numbers of law-abiding individuals were unable to even *try* to purchase ammunition for lack of the requisite identification.

II. PROCEDURAL BACKGROUND AND THE ORDER ON APPEAL

Plaintiff Kim Rhode, along with six additional California residents, four out-of-state ammunition vendors, and the California Rifle & Pistol Association, Incorporated (“CRPA”) filed this lawsuit in April 2018, arguing that California’s ammunition scheme violates the Second Amendment, the Commerce Clause, and the Equal Protection Clause, and is preempted by 18 U.S.C. § 926A. E.R.VII 1755-85.

Immediately following implementation of aspects of California’s ammunition scheme on July 1, 2019, and reports of significant and substantial issues with it, Plaintiffs/Appellees moved for a preliminary injunction on the grounds that California’s regime violates the Second Amendment and the Commerce Clause. E.R.VII 1635-37.

In support, Plaintiffs/Appellees filed multiple declarations providing first-hand accounts of how California’s ammunition scheme harms both individuals and

Vendors. Plaintiff CRPA filed a declaration on behalf of members whose transactions were denied, rejected, or burdened for various reasons, and who encountered obstacles trying to correct the issues. E.R.VII 1558-59. Plaintiffs/Appellees submitted declarations from several Vendors who experienced a high “DENY/REJECT” rate for Standard Checks (up to 18%), and were forced to turn away potential customers with a FLA ID and insufficient supplemental documentation. E.R.VI 1539-40. One vendor estimated it was forced to turn away up to half its potential customers. E.R.VI 1501-02. Plaintiff Able’s Sporting, Inc., an out-of-state ammunition vendor, submitted a declaration explaining how its California business had dropped from 13% of all its retail sales to less than 0.5%. E.R.VI 1554-55.

For its part, the State submitted a declaration confirming that approximately 18% of Standard Checks submitted were rejected. E.R.IV 955. And while the State submitted several additional declarations updating the figures for rejections, denials, and other information it provided, as ordered by the court following several status conferences, E.R.II 134-54, 235-65, 285-304, at no point has it offered any evidence directly contradicting any of the data Appellees submitted. To the contrary, the State’s evidence confirmed it.

After receiving considerable briefing and hearing extensive argument over months, the district court granted Appellees’ motion, finding that California’s regime likely violates both the Second Amendment and the Commerce Clause. E.R.I 1-120. The court’s decision detailed the largely uncontested evidence of how California’s scheme not only rejects law-abiding citizens from exercising their rights roughly 16% of the time, but also has prevented or deterred an untold number of law-abiding

citizens from even attempting to “qualify” to purchase ammunition. The court further explained the undisputed manner in which the regime both discriminates against out-of-state vendors and directly regulates out-of-state transactions. E.R.I 97-104.

The following day, the State filed a motion to stay the court’s order, which the court denied. E.R.I 127-29.

The State then filed a notice of interlocutory appeal and an emergency motion asking this Court to stay the order pending appeal. *See* E.R.I 122-26. This Court granted an administrative stay that same day, E.R.I 121, and later granted the State’s motion. Dk. No. 13-1. As a result, a novel regime that the district court concluded likely violated the Second Amendment and Commerce Clause remains in effect.

STANDARD OF REVIEW

This Court’s review of a preliminary injunction is “narrow,” and asks “only whether the district court correctly distilled the applicable rules of law and exercised permissible discretion in applying those rules to the facts at hand.” *Fyock v. City of Sunnyvale*, 779 F.3d 991, 995 (9th Cir. 2015). The relevant factors for a preliminary injunction are (1) likelihood of success on the merits, (2) likelihood of irreparable harm absent preliminary relief, (3) the balance of the equities, and (4) whether an injunction serves the public interest. *Am. Trucking Ass’ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). “The basic function of a preliminary injunction is to preserve the status quo pending a determination of the action on the merits.” *Chalk v. U.S. District Court*, 840 F.2d 701, 704 (9th Cir. 1998).

SUMMARY OF ARGUMENT

In its brief existence, California's alone-in-nation regime has already prevented tens of thousands of law-abiding individuals from purchasing ammunition and has precluded or deterred untold more from even trying. Meanwhile, the State's own data demonstrate that while its regime has a false positive rate of upwards of 15%, a mere 0.1% of all attempted transactions involve prohibited persons. And the State provided nothing but sheer conjecture that those prohibited persons did not proceed to simply illegally obtain ammunition for their illicit firearms elsewhere. The district court acted well within its discretion in entering a preliminary injunction preserving the status quo while it further examines a patently dubious regime that is fundamentally inconsistent with the Second Amendment (and any concept of constitutionally sufficient tailoring) and violates the Commerce Clause twice over to boot.

The State's efforts to identify reversible error in the district court's preliminary injunction are meritless. The State makes the predictable and credibility-straining argument that the Second Amendment does not apply at all, but this Court has already squarely rejected that argument and held that restrictions on purchasing ammunition are "presumptively constitutional." The State makes a muddled claim that it can survive a facial challenge as long as its regime affects felons and others without Second Amendment rights, no matter what its effect on law-abiding citizens or how imperfect the statute's tailoring. That argument is meritless and would mean that *Heller* was wrongly decided. The State makes the even more muddled claim that Appellees lack "standing" to explain that the statute is insufficiently tailored or unduly burdens other law-abiding citizens. But neither Article III nor anything else in

standing jurisprudence precludes parties with undoubted Article III standing from pointing to a law's impact on others in demonstrating lack of tailoring or undue burdens. The State is thus left quibbling with factual findings that are confirmed by its own evidence.

The State's attack on the district court's Commerce Clause holding fares no better. The State does not and cannot deny that its regime requires vendors to have an in-state presence to process ammunition transactions, or that it puts out-of-state vendors at the complete mercy of in-state competitor vendors who not only can drive up the cost of out-of-state ammunition transactions with special fees, but can refuse to process those transactions at all. That makes the regime facially discriminatory, which in turn makes it virtually *per se* invalid. In addition, the law plainly has the effect of regulating out-of-state transactions, as it precludes those transactions from having effect in California unless and until they are processed by an in-state Vendor. The only regime that bears any resemblance to California's novel ammunition purchasing scheme is the restrictive system in some states for alcohol distribution. But it took a constitutional amendment—actually, two—to authorize states to interfere with interstate commerce in that manner. California has no basis to impose such a discriminatory and extraterritorial regime in the absence of a constitutional amendment, especially when it comes to an article of commerce independently protected by the Constitution.

In short, California has not come close to meeting its burden of proving that its novel ammunition regime is constitutional at this juncture. And given the paltry evidence it produced at this preliminary stage—most of which *confirms* the many

problems with its regime—the district court plainly did not abuse its discretion by enjoining California’s alone-in-the-nation regime until it can fully and finally assess the constitutionality of that regime.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THAT APPELLEES ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CONSTITUTIONAL CLAIMS

A. The District Court Did Not Abuse Its Discretion in Concluding that the Challenged Provisions Likely Violate the Second Amendment

This Court has developed a multi-step framework for adjudicating Second Amendment claims. A court first “asks whether the challenged law burdens conduct protected by the Second Amendment,” and, if so, then analyzes the law under heightened scrutiny. *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013). Whether strict or intermediate scrutiny applies depends on “(1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the law’s burden on the right.” *Id.* at 1138 (citations omitted). If the law “imposes such a severe restriction . . . that it amounts to a destruction of the Second Amendment right,” it is “unconstitutional “under any level of scrutiny.” *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016). Under Ninth Circuit precedent, a “law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny.” *Chovan*, 735 F.3d at 1138. Otherwise, intermediate scrutiny applies. *Silvester*, 843 F.3d at 821.

Here, the district court correctly concluded that California’s regime is subject to at least intermediate scrutiny, as it unquestionably burdens conduct protected by the

Second Amendment. Accordingly, while Appellees maintain that strict scrutiny is warranted, this Court need not resolve that question because the district court plainly did not abuse its discretion in finding that the scheme likely flunks intermediate scrutiny given the record before it. E.R.I 91-96.

1. California’s Ammunition Scheme Plainly Implicates Appellees’ Second Amendment Rights

Over a decade ago, the Supreme Court made clear that the Second Amendment “confers an individual right” that belongs to “the people.” *District of Columbia v. Heller*, 554 U.S. 570, 580, 622, 626-27 (2008). The right belongs to all “law-abiding, responsible citizens,” and it protects arms that are “typically possessed by law-abiding citizens for lawful purposes.” *Id.* at 625, 635.

This Court has unequivocally held that the right to keep and bear arms “implies a corresponding right to obtain the bullets necessary to use [firearms].” *Jackson v. City & Cty. Of San Francisco*, 746 F.3d 953, 967 (2014) (quotation marks omitted). The State thus concedes, as it must, that the Second Amendment protects acquisition of ammunition. A.O.B. 32. The State nevertheless argues that its ammunition scheme is immune from Second Amendment scrutiny because it is among the “presumptively lawful” measures identified by the Supreme Court. *Id.* at 34 (quoting *Heller*, 554 U.S. 626-27) (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill . . . or laws imposing conditions and qualifications on the commercial sale of arms.”). But as this Court pointedly noted in *Jackson*, “*Heller* does not include ammunition regulations in the list of ‘presumptively lawful’ regulations.” *Jackson*, 746 F.3d at 968.

The State claims that *Jackson* held only that “bans on certain types of ammunition” avoid the “presumptively lawful” classification. A.O.B. 34. But *Jackson* did not even involve a ban on ammunition; it involved a prohibition on the *sale* of certain ammunition. Moreover, the Court did not confine its holding even to sale bans, but rather found no “historical prohibitions discussed in case law or other ‘historical evidence in the record before us’ indicating that *restrictions on ammunition* fall outside of the historical scope of the Second Amendment.” *Jackson*, 746 F.3d at 967 (emphasis added). Here too, the State has never even tried to identify any historical analog for its novel ammunition regulation regime—nor could it, for the regime is concededly the first of its kind. There is thus nothing “presumptively lawful” about it.

The State resists that conclusion, arguing that prohibitions on possession of protected arms by felons are “presumptively lawful.” A.O.B. 34-36. But as the State concedes, A.O.B.35, no one is challenging its prohibition on felons possessing ammunition. Appellees are challenging only the novel means by which the State imposes burdens on law-abiding citizens in an effort to enforce that prohibition. The State cannot avoid scrutiny of its chosen means by claiming that its intended end is presumptively lawful. Means-ends scrutiny would be pointless if a permissible end justified any means.

The State’s alternative argument that its scheme is “presumptively lawful” because it is merely “imposing conditions and qualifications on the commercial sale of arms” likewise fails. A.O.B. 36. Whatever *Heller* meant by that passage, it could not possibly have meant to announce that any and all conditions and qualifications on the sale of arms, no matter how novel or burdensome, escape constitutional scrutiny. Nor

could the Court have had in mind a never-before-seen regulatory regime under which a state does not recognize its own state-issued identification as sufficient to allow someone to even *try* to purchase protected arms, then erroneously rejects 16% of those who produce the additional forms of identification it demands, leaving tens of thousands of law-abiding people either spending days to months just trying to prove to the state's satisfaction that they are indeed entitled to exercise their fundamental constitutional right to keep and bear arms or giving up on doing so. E.R.I 111-12; *See also* E.R.II 241.

2. The State Cannot Meet Its Burdens to Justify California's Ammunition Scheme Under Any Form of Heightened Scrutiny

Because California's regime plainly burdens conduct protected by the Second Amendment, the district court correctly concluded that it must satisfy at least intermediate scrutiny. *Chovan*, 735 F.3d at 1139-40. Intermediate and strict scrutiny have much in common, including that the burden to justify a law shifts squarely to the state. To satisfy intermediate scrutiny, the State must prove that its regime is "substantially related" to an important government interest, *id.*, and that "its chosen means are 'closely drawn' to achieve that end without 'unnecessary abridgment' of constitutionally protected conduct," *McCutcheon v. FEC*, 134 S. Ct. 1434, 1456-57 (2014). The district court plainly did not abuse its discretion in concluding that, at least on the record before it, California's ammunition scheme flunks both tests. E.R.I 91-96.

a. California's ammunition scheme is not sufficiently tailored to meet the State's interest

While Appellees do not dispute that the State has a legitimate interest in keeping arms out of the hands of dangerous people, they very much dispute that this regime is sufficiently—or even remotely—tailored to accomplish that interest. And the paltry evidence the State produced in defense of its regime did not come close to carrying the State's burden.

According to the State's own data, during the first seven months of the regime's existence, at least 101,047 Standard Check transactions (involving 81,112 unique individuals) were rejected, and another 342 Basic Check transactions were rejected as well. A.O.B. 30, n. 8. "To put this in perspective, 16% of those who established their citizenship were rejected and prevented from lawfully exercising their Constitutional right" for reasons as trivial as the State not having their correct address on file. E.R.I 19. By comparison, a miniscule 0.12% were found to be prohibited persons. *See* E.R.II 251, 255. The State thus prohibited *tens of thousands* of perfectly lawful ammunition transactions simply because its eligibility check system is too flawed to reliably distinguish law-abiding citizens from felons. The law does not tolerate this kind of imprecision from private parties, *see, e.g., Dennis v. BEH-1, LLC*, 520 F.3d 1066 (9th Cir. 2008) (imposing liability on credit-reporting agency for inadequate procedures to weed out false positives with respect to negative credit information); it plainly cannot allow such lack of tailoring when it comes to fundamental constitutional rights.

The State dismisses this remarkable false positive rate, noting that 40% of the 81,112 people whose Standard Checks were rejected for reasons having nothing to do with their eligibility to exercise their Second Amendment rights eventually succeeded

in purchasing ammunition. A.O.B. 40. It is not clear why the State thinks this helps its cause. First, the fact that the State's system *concededly* blocked more than 30,000 perfectly lawful ammunition transactions just confirms that the law burdens far more constitutionally protected conduct than necessary or tolerable. Second, the State admits that 60% of those 81,112 people—a decided majority—still have *not* yet been able to acquire ammunition, even though the State has absolutely no reason to think that they are prohibited persons. *See* E.R.II 247-48.

Blaming the victims of its convoluted regulatory scheme, the State faults these law-abiding individuals for using the Standard Check rather than the Basic Check, or failing to obtain a current AFS record. A.O.B. 40. But as the district court found (in findings that the State does not and cannot claim are clearly erroneous), “[t]he evidence shows that the hope does not match the reality,” E.R.I 59, for the State's own witness conceded that when people are rejected, they are given effectively no guidance from the State on why they were rejected or how to fix the problem. E.R.II 171-73. It is little surprise, then, that more than 60,600 people have yet to figure out how to cure a rejection several months after the fact. Even assuming they were aware that there is a mechanism to fix their AFS records, moreover, that process can itself take months. E.R.II 314-22. What is more, the Basic Check system has its own flaws, as over 100 individuals who went that route were rejected—not because they were prohibited, but because the State could not confirm their DMV records. A.O.B. 11, E.R.II 251. Likewise, the State refused to authorize 235 transactions merely because it could not confirm whether the purchasers were, in fact, prohibited. E.R.II 238, 251.

In short, California's scheme has indefinitely denied *tens of thousands of legitimate*

purchasers exercise of their constitutional right to acquire ammunition, unless and until they can figure out how to overcome its hurdles. And that does not even account for the untold numbers of people who were deterred at the threshold because their California-issued identification does not suffice for them to even try to establish that they are “qualified” to exercise their Second Amendment rights. *See, e.g.*, E.R.VI 1501, 1503. “Nobody really knows how many law-abiding citizen residents continue to be completely blocked from buying ammunition due to the burdens and complexity of the California scheme, but the number is surely substantial.” E.R.I 37. The State predicted “approximately 13 million ammunition transactions with Standard background checks, yearly. In reality, there have been orders of magnitude less. In the seven months since July 1, 2019, there have been only 635,856 Standard and Basic checks.” E.R.I 36. The district court was certainly entitled to draw the inference from this undisputed evidence that the State’s predictions were not simply off by several orders of magnitude but “that the background check laws are having incredibly chilling effects on law-abiding gun owners.” *Id.*

Unable to dispute any of these facts (because most came from its own data and witnesses), the State boasts that more than 750 prohibited persons were prevented from obtaining ammunition from a Vendor between July and January, and claims (without any record evidence to substantiate its claim) that “countless” additional prohibited persons undoubtedly were dissuaded from attempting purchase. A.O.B. 39.² But when assessing the proper “fit” under intermediate scrutiny, courts are not

² Curiously, the State finds it safe to assume that countless prohibited persons were dissuaded from undergoing the background check but demands evidence that some non-prohibited persons were precluded or deterred from proceeding because they

concerned only with the purported benefits of a law. Even a dragnet captures some people engaged in criminal activity. The question is not whether there are some non-false positives, but whether a law’s encroachment on constitutional rights is “more extensive than necessary” to serve the government’s interest. *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 816 (9th Cir. 2013). As the district court explained, E.R.I 62, the relevant inquiry is whether the government can meet its burden of proving that its law does not burden “substantially more” constitutionally protected conduct than “necessary to further [its important] interest.” *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 214 (1997). The State’s own evidence confirms that it cannot. Indeed, a system that denies 16% of people their constitutional rights over trivialities in service of stopping 0.12% of people from violating the law is very nearly the definition of a law that burdens “substantially more” constitutionally protected conduct than “necessary to further [its important] interest.” *Turner Broad.*, 520 U.S. at 214.

To be clear, the question here is not whether any ammunition background check scheme could be constitutional. It is whether *this* scheme is. Absent from the State’s briefing is any explanation whatsoever of how any of the specific aspects of its ammunition scheme are sufficiently tailored to further the State’s interest. It does not

lack the requisite identification. *See* A.O.B. 9. No matter—unlike the State’s mere conjecture, there actually *is* evidence of the latter, as Vendors have submitted declarations explaining that they have had to turn away as high as 50% of would-be purchasers for lack of acceptable identification. E.R.VI 1501. Moreover, the relevant question for prohibited persons is not whether they were dissuaded from undergoing a background check, but whether they were prevented from obtaining ammunition or simply obtained it unlawfully. A system that massively inconveniences and deters law-abiding citizens, while doing nothing to prevent prohibited persons from obtaining ammunition, would be the worst of all worlds.

even attempt to explain why it cannot accept its own standard-issue identification when the federal government accepts that identification for its firearm background checks. E.R.III 554. Nor does it give any justification for its absurdly high rejection rate, let alone one linked to furthering public safety. The State is likewise silent on why it cannot better inform individuals how to navigate its scheme, or even provide the specific reason for rejection. The State is silent on these matters because there is nothing for it to say. But its silence means it has clearly failed to carry its burden to show constitutionally sufficient tailoring.

b. California’s ammunition scheme is not “substantially related” to any public safety interest

The district court likewise did not abuse its discretion in finding it unlikely that the State will meet its burden of proving that its regime is “substantially related” to its identified ends. *See* E.R.I 44. Again, Appellees do not dispute that the State has a legitimate interest in keeping arms out of the hands of dangerous people. The problem is that the State has yet to demonstrate that its ammunition scheme furthers that interest in any material way.

As an initial matter, “it would be hard to persuasively say that the government has an interest sufficiently weighty to justify a regulation that infringes constitutionally guaranteed Second Amendment rights if the Federal Government and the states have not traditionally imposed—and even now do not commonly impose—such a regulation.” *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1294 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). That is precisely the case here. “In fact, a background check required each time ammunition is purchased has never been

implemented before” by any government, federal or state. E.R.I 54. Surely more states—including those Amici states that defend California’s scheme here—would have adopted such a scheme if it were constitutionally viable and truly likely to play a meaningful role in keeping ammunition out of the hands of criminals.³

Moreover, for a law to be substantially related to a government interest, the government must demonstrate that the “restriction will in fact alleviate” its concerns. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001). The government cannot meet that burden by relying on “mere speculation or conjecture,” *id.*, but rather must offer evidence that its restriction will in fact further its stated interests. *See City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 437 (2002). The State cannot “get away with shoddy data or reasoning.” *Id.* at 438.

The district court did not abuse its discretion in finding that “[a]t this point in the case, the evidence does not fairly support the notion of Proposition 63 that background check and anti-importation provisions for ammunition acquisition will make the public safer.” ER 92. As the court explained, a study funded by the University of California Firearm Violence Research Center—created by *the California Legislature*—determined that comprehensive background check requirements for purchasing firearms are “not associated with significant and specific changes in rates of fatal firearm violence.” E.R.III 557-63. The study reached that conclusion despite acknowledging “more than 3 million attempted purchases by prohibited persons” nation-wide since 1994. *Id.* at 557. And the State submitted “no conflicting legislative

³ None of the regimes cited by Amici impose point-of-purchase background checks like California. Amici Br. States (Dkt No. 19) at 10-16.

evidence supporting the efficacy of state-wide background checks.” E.R.I 92.

On that record, the court was certainly free to conclude that “[i]f the authors of the 2018 study of California’s firearms background check are correct, background checks have not worked and do not work.” E.R.I 93. After all, “if implementing a comprehensive background check for firearm purchasers has had practically zero effect on California gun violence, then one would not expect a reduction of gun violence from a similar background check for ammunition purchases.” E.R.I 89.

Ignoring this study by a State-sponsored institution, the State once again insists that its regime must be working because 750 prohibited persons have been unable to acquire ammunition from a Vendor. A.O.B 38-43. But that says nothing about whether those persons were able to acquire ammunition through other means. Someone seeking to purchase ammunition for a firearm he is prohibited from possessing but nevertheless does is hardly likely to be deterred from pursuing illicit means of acquisition if he cannot buy ammunition at a store. *See* E.R.I 32-33. The State’s bare assertion that its regime will somehow translate into less gun crime is thus the epitome of “mere speculation” and “conjecture.”

The State alternatively points to studies of two cities’ ammunition schemes. A.O.B. 38-40. But the district court considered those studies and found them of little, if any, value because neither involved background checks. E.R.I 82-85. The State also points to a New Jersey report that says criminals purchase ammunition. That report made nine recommendations. Tellingly, requiring ammunition purchasers to prove citizenship or undergo a background check was not among them. Indeed, New Jersey does not currently have (nor has it ever had) an ammunition background check

requirement. E.R.I 87-88. “Perhaps with more time and more evidence than three old studies about ammunition purchase recordkeeping, the State will be able to establish a reasonable fit. At this point, however, the government has done little more than simply posited the existence of the disease sought to be cured. And the cure, making it difficult for law-abiding citizens to acquire ammunition, is far worse than the disease.” E.R.I 65-66. That is fatal to the State’s appeal of the district court’s preliminary injunction order.

3. Appellees Properly Assert That the State’s Ammunition Scheme Is Unconstitutional on Its Face

Unable to attack the district court’s factual findings or preliminary conclusions, the State claims the court failed to apply “the controlling legal standard” for a facial challenge. A.O.B. 27. In fact, it is the State that is profoundly confused. To be sure, a facial challenge fails if a law has a “plainly legitimate sweep.” A.O.B. 27-28 (quoting *Jackson*, 746 F.3d at 961).⁴ But a law that fails narrow tailoring is not somehow immune from facial challenge just because it sweeps in some conduct that could permissibly be prohibited by a more finely tuned law. In all events, the State’s claim that its ammunition regime has such a sweep “reflects a misunderstanding of the Supreme Court’s jurisprudence.” *Jackson*, 746 F.3d at 962.

The State first claims that its scheme is “legitimate” as applied to “felons, domestic violence misdemeanants, those without lawful status, and the dangerously

⁴ The State also invokes the no-set-of-circumstances test from *United States v. Salerno*, 481 U.S. 739, 745 (1987)). But that test does not save an untailed or overbroad law just because it reaches conduct that could be prohibited by a properly tailored law. Put differently, an improperly tailored law or one that imposes undue burdens on constitutional rights is unconstitutional in all its applications.

mentally ill from procuring ammunition.” A.O.B. 28. That may be so in the sense that burdening ammunition purchases by those who have no right to purchase ammunition in the first place is not unconstitutional. But that does not establish that the law has a “legitimate sweep.” If it did, then no facial challenge to any firearms restriction would *ever* succeed, as virtually every law could be said to be constitutional “as applied” to those who lack Second Amendment rights. Indeed, by that logic, *Heller* itself was wrongly decided since D.C.’s handgun ban was “legitimate” as applied to felons.

This Court has squarely rejected such dubious arguments. In fact, that is just another variant of the argument this Court rejected in *Jackson*. There, the city argued that a facial challenge to a firearm storage ordinance must fail because the plaintiff had “conceded that locked storage is appropriate in some circumstances, such as when it is foreseeable that a child would otherwise gain possession of a firearm.” ” *Jackson*, 746 F.3d at 962. This Court emphatically disagreed, explaining that the law “[e]ither ... is a permissible burden on the Second Amendment right to ‘keep and bear arms’ or it is not.” *Id.* The extent to which the burdens it imposed sometimes accomplished legitimate ends was certainly relevant to making that determination. But the bare fact that the law sometimes accomplished permissible ends did not mean that it had a “legitimate sweep.”

The State next claims that its regime has a “legitimate sweep” because, for many prospective purchasers, the burdens it imposes are not substantial. A.O.B. 29. That is an argument (albeit a flawed one, *see supra* Part I.A.2.a) that its regime *satisfies* Second Amendment scrutiny, not that it is immune to facial challenge. Even assuming

some people are able to “qualify” to purchase ammunition with relative ease, a facial challenge does not require proof that the burdens the State has imposed impact everyone uniformly, let alone deprive everyone of Second Amendment rights entirely. Voter ID laws are not facially constitutional just because most people have identification. Burdens on abortion are not facially constitutional just because some women live near the state’s sole remaining clinic. When the basic question is whether a law is sufficiently tailored to further the government’s interest without imposing greater burdens on a constitutional right than necessary, a court must consider the *aggregate* impact of those burdens, not just how the law impacts the least burdened individuals. If the bare fact that a hardy few succeed in exercising their constitutional rights notwithstanding material burdens were sufficient to defeat a facial challenge, then few facial constitutional challenges would ever succeed.

The State alternatively contends that a facial challenge may “consider only the text of the [laws], not [their] application.” A.O.B 38 (quoting *Calvary Chapel Bible Fellowship v. City of Riverside*, 948 F.3d 1172, 1176 (9th Cir. 2020)). The State is confused again. *Calvary* was simply making the point that a facial challenge to a facially neutral law based on differential enforcement will rarely succeed. *Jackson*, 746 F.3d at 962. For example, if (as in *Calvary*) “secular and religious places of assembly are treated the same” “on the face of” the law, the plaintiff cannot mount a facial challenge by claiming that the law may not be *applied* in the neutral manner its text contemplates. 948 F.3d at 1176.

Here, Appellees’ challenge California’s scheme facially. Their concerns are merely exacerbated by the State’s slipshod implementation. On its face, the regime

imposes the same burdens on *all* Californians who seek to obtain ammunition, and Appellees claim that those burdens are *categorically* greater than the Second Amendment tolerates. To the extent the State's implementation of the regime exacerbates the constitutional problems and underscores that the State is not proceeding as if a fundamental constitutional right hangs in the balance, nothing in *Calvary*, *Jackson*, *Washington Grange*, or any other case allows slipshod enforcement to immunize problems that are obvious on the statute's face.

Finally, this case does not "raise the risk of premature interpretation of statutes on the basis of factually barebones records." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51 (2008) (citations omitted). To the contrary, this record at this stage is unusually robust for a preliminary injunction. The State was *thrice* permitted to submit evidence to defend its scheme. E.R.II 266. In response, the State presented declarations proving (among other problems) that Standard Checks thwarted more than 100,000 ammunition transactions between July 2019 and January 2020 for trivialities. E.R.II 235-265, 285-304; E.R.IV 944-961. The district court's conclusion that the system is "imprecise, slow, and erratic," E.R.I 43, thus had nothing to do with speculation about how it *could* work in various "*potential* situation[s] that *might* develop." A.O.B. 30 (quoting *Jackson*, 746 F.3d at 962) (emphasis added). It was instead grounded in copious evidence of how the system *does* (or, more aptly, does not) work.

The State's argument ultimately has little (if anything) to do with the appropriate legal standards for adjudicating facial challenges, and instead is simply an attack on how the district court resolved this particular challenge. But the State's claim

that its scheme is not unduly burdensome contradicts the district court’s extensive factual findings, E.R.I 128—findings that are owed deference at this preliminary stage, *Duncan v. Becerra*, 742 F. App’x 218, 221 (9th Cir. 2018). Moreover, the argument largely hinges on an unsupported claim that, once rejected, purchasers can simply fix whatever problem led to their improper rejection. A.O.B. 30, 31-32. But the record more than supported the district court’s contrary conclusion, as the State’s own witnesses confirmed that prospective ammunition purchasers are not informed why their background checks are rejected or how to fix it, and have experienced ample problems and delays trying to do so. E.R.I 20. This is likely why *more than half* of those people who are rejected *have not* gone on to obtain ammunition. E.R.I 59.

In the end, the State identifies no problem with this facial challenge or with how the district court adjudicated it. Instead, it is the State’s suggestion that its regime may be challenged only by seriatim as-applied challenges that presents profound constitutional and practical concerns. It is not the courts’ job to make a statute narrowly tailored by adjudicating hundreds of as-applied challenges. The burden is on the state to draft and implement a narrowly tailored regime from the outset. Having abjectly failed in that regard, California is in no position to complain that its facially unconstitutional regime has been preliminarily enjoined.

4. Appellees Plainly Have Standing to Bring Their Second Amendment Challenge to the State’s Ammunition Scheme

The State closes by repackaging its facial challenge arguments as an attack on Appellees’ standing, claiming that the district court “adjudicated Second Amendment claims that no plaintiff had standing to bring.” A.O.B. 43. But the State does not

appear to dispute that Appellees have Article III standing. Nor could it. Article III requires only an injury that is “(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560. Here, individual plaintiffs attested that they have expended both money and considerable time navigating California’s burdensome system and will be forced to do so in perpetuity, E.R.VI 1546-47, and CRPA attested that many of its members have been prevented or deterred from obtaining ammunition at all, E.R.VII 1557-60; *see also* E.R.II 309-10, 313-17. That is more than sufficient to establish the “minimal” injury this Court requires. *Preminger v. Peake*, 552 F.3d 757, 763 (9th Cir. 2008). And once a party has standing to raise a challenge, it can point to anything that is relevant under the legal standards applicable to its claims, even things involving the law’s undue burden or improper effect on other parties.

The State nonetheless complains that Appellees cannot invoke the reality that tens of thousands of law-abiding citizens have been denied the right to purchase ammunition because Appellees have not themselves been *precluded* from obtaining ammunition. That is wrong as a matter of both fact and law. First, CRPA *has* alleged its members were precluded from obtaining ammunition. E.R.VII 1557-60. The State inexplicably claims that CRPA’s members must litigate those claims themselves, A.O.B. 44-45, but it is well settled that “[o]rganizations can assert standing on behalf of their own members.” *E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1264 (9th Cir. 2020). Individual members need only participate when the claims are individualized, such as a claim for money damages. *See Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1172 (9th Cir. 2002).

At any rate, Article III does not preclude a party with Article III standing from invoking the experiences of others when they are legally relevant to the claims the plaintiff has standing to raise. Constitutional tests of narrow tailoring or undue burdens often make a law's impact on others relevant to the success or failure of a claim. In those circumstances, Article III requires the plaintiff have standing to bring the claim but not that she personally experience everything that makes the statute improperly tailored or unduly burdensome. Under the State's (il)logic, a person with \$6 could not argue that a \$5 poll tax is unconstitutional in part because some voters cannot afford it.

The State protests that “ ‘[a] person to whom a statute properly applies can't obtain relief based on arguments that a differently situated person might present.’ ” A.O.B.43 (quoting *Chovan*, 735 F.3d at 1135. But that reflects that same misunderstanding as the State's arguments about facial challenges. Appellees' contention is that the regime is unconstitutional as applied to *everyone*, because (among other things) it is not sufficiently tailored to further the government's asserted interest without unnecessarily burdening constitutionally protected conduct.⁵ This Court need not blind itself to the reality that those burdens are so great as to preclude some people from purchasing ammunition just because some Appellees have not been barred. After all, a court could not coherently determine whether a law is sufficiently

⁵ The State's contention that Appellees are relying on the overbreadth doctrine fails for similar reasons. Overbreadth doctrine comes into play when “a person to whom a statute may *constitutionally* be applied” seeks to “challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court.” *New York v. Ferber*, 458 U.S. 747, 767 (1982) (emphasis added). That is not Appellees' theory.

tailored to avoid unnecessary abridgement of constitutional rights if it could not consider the full extent to which a law abridges constitutional rights. The State’s peculiar standing argument is thus a nonstarter.

B. The District Court Did Not Abuse Its Discretion in Concluding that California’s Ammunition Scheme Likely Violates the Commerce Clause

The district court also acted well within its discretion in concluding that California’s novel ammunition scheme likely violates the Commerce Clause. Before the scheme took effect, a “merchant physically located outside California was permitted to sell ammunition directly to a customer in California,” whether via direct shipment or via a face-to-face transaction in another state. E.R.I 99. Now, “California’s resident businesses are the only businesses that may sell directly to ammunition consumers” who want to possess that ammunition in California. E.R.I 103. The State thus concedes, as it must, that “an out-of-state ammunition vendor” cannot “sell ammunition” directly to Californians for use in California unless it “has a physical store in California.” A.O.B. 50. Even if the sale occurs face-to-face, if it occurs outside of California, then it must be processed through “a brick-and-mortar location in California.” A.O.B. 51. The district court acted well within its discretion—indeed, was eminently correct—in concluding that this discriminatory and extraterritorial regime likely violates the Commerce Clause twice over.

1. California’s Ammunition Scheme Impermissibly Discriminates Against Interstate Commerce

The district court correctly concluded that California’s scheme likely impermissibly discriminates against and burdens interstate commerce. As the State

concedes, “an out-of-state ammunition vendor” cannot “sell ammunition” directly to Californians who want to possess ammunition in California unless it “has a physical store in California.” A.O.B. 50. That is textbook discrimination against out-of-state businesses, which is virtually per se invalid under the Commerce Clause. Indeed, a long line of cases from both the Supreme Court and this Court have repeatedly struck down laws that require an in-state presence to conduct business in the state.

Take, for instance, the Supreme Court’s seminal decision in *Dean Milk Co. v. Madison*, 340 U.S. 349 (1951). That case involved an ordinance that made it unlawful to sell pasteurized milk within city limits unless it was processed at a plant located within five miles of the city center. *Id.* at 350. The Supreme Court struck the law down because it conditioned access to the Madison market on physical presence within (or adjacent to) the jurisdiction. *Id.* at 356. The Court acknowledged that Madison enacted the ordinance out of concern for “the health and safety of its people,” and it did not question the legitimacy of Madison’s interest in imposing more stringent processing standards than neighboring jurisdictions. *Id.* at 354. The Court nonetheless held the ordinance unconstitutional, finding those concededly valid interests insufficient to justify “erecting an economic barrier protecting a major local industry against competition from without the State.” *Id.*

In *Granholm v. Heald*, 544 U.S. 460 (2005), the Court confronted a New York law mandating that a winery could sell wine directly to New Yorkers only with a direct sales license, which the winery needed “a physical presence in the State” to get. *Id.* at 474. Again, the Court conclude that “[t]he differential treatment between in-state and out-of-state wineries constitutes explicit discrimination against interstate commerce.”

Id. at 472. There too, New York tried to justify that discrimination on “health,” “safety,” and “regulatory accountability” grounds. *Id.* at 492. And there too, the Court found those concededly valid objectives insufficient to justify the discrimination, observing “that improvements in technology have eased the burden of monitoring out-of-state wineries” and that “[b]ackground checks can be done electronically.” *Id.*

The State tries to distinguish these cases, arguing that its scheme treats in-state and out-of-state businesses equally because “all vendors,” regardless of their state of incorporation or domicile, “must open a physical store in California if they want to conduct background checks and sell ammunition directly to customers in the State.” A.O.B. 54. But that was equally true in *Dean Milk* and *Granholm*. *Every* milk processor wanting to sell milk in Madison needed a physical presence within a five-mile radius of Madison, even if it was a Madison-based retailer that processed its milk in Milwaukee. And *every* winery that wanted to ship directly to New Yorkers needed a physical presence in New York, even if it was a California winery owned by a New York resident. Those laws were struck down notwithstanding that purported “equal treatment” of in-state and out-of-state residents because “discrimination based on the extent of local operations is itself enough to” trigger the rule of virtually per se invalidity. *Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27, 42 n.9 (1980).

The State protests that it does not require out-of-state vendors to become “residents” in the sense of incorporating or domiciling in California. A.O.B. 53. But neither did the laws in *Dean Milk* or *Granholm*. To be sure, state laws that “classify employers based on the location of their headquarters” discriminate against interstate commerce. *Int’l Franchise Ass’n, Inc. v. City of Seattle*, 803 F.3d 389, 400 (9th Cir. 2015).

But laws that “classify employers based on ... the location of their workers,” their production facilities, or their points of sale likewise “facially discriminate against out-of-state entities.” *Id.*⁶

In all events, it is not even true that California’s scheme treats in-state and out-of-state vendors “equally,” for an out-of-state vendor cannot sell ammunition directly to a Californian, period. “[S]tate residents who purchase ammunition while outside of California—either at a physical store, over the internet, or by any other lawful means—must deliver it to a licensed ammunition vendor before taking possession of it in the State.” A.O.B. 51. Thus, while a California Vendor may sell ammunition to a Californian face-to-face who wants to possess that ammunition in California, an out-of-state vendor may not—even if that seller has the same federal license that the State deems sufficient to allow a California Vendor to sell ammunition. Instead, under the Challenged laws, “an out-of-state seller” that lacks a “brick-and-mortar [store] in California” has only one option: process the transaction through a Vendor with “a brick-and-mortar location in California, who may charge a fee of its choosing for the service, or refuse to offer the service at all. A.O.B. 5-1.⁷

⁶ While the State suggests that the district court confused the two concepts (confusion that would make no legal difference anyway), the court clearly used the term “residency” to refer to establishing a physical presence, not to incorporation or domicile. E.R.I. 101.

⁷ Even if the laws did treat in-state and out-of-state vendors equally, a law that “discriminates” against out-of-state businesses “is no less discriminatory because in-state [businesses] are also covered by the prohibition.” *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 391 (1994). The face-to-face sales requirement thus would remain discriminatory even if it did not apply to sales that take place entirely outside California.

Far from making the regime “less restrictive,” A.O.B. 53, that only exacerbates the discrimination (and creates a separate extraterritoriality problem, *see infra* Argument, Part I.B.2). States cannot “hoard a local” market “for the benefit of local businesses.” *C & A Carbone*, 511 U.S. 389. Yet that is precisely what California’s scheme does, allowing *only* California Vendors to meet its face-to-face requirements. Vendors not only have a monopoly on this service, but can charge virtually as much they want to process an out-of-state transaction, or refuse to process such transactions at all. The regime thus not only “deprives out of state businesses of [equal] access to a local market,” but also “drives up the cost for out-of-state interests” in the markets in which they can participate. *Id.* Paying a fee only for out-of-state transactions is blatant discrimination against interstate commerce.

Rather than grapple with these binding precedents, the State claims (at 51) that the true “on-point precedent” is the Western District of New York’s decision in *NYSRPA v. Cuomo*, 990 F. Supp. 2d 349 (W.D.N.Y. 2013). But this Court is bound only by its decisions and those of the Supreme Court. And as those binding precedents make clear, state laws violate the Commerce Clause when—as here—they require an in-state presence to compete on equal terms.

At any rate, *NYSRPA* is hardly “on-point,” as the law there neither purported to prohibit face-to-face sales *outside* of New York nor required transactions with out-of-state vendors to be “processed” through an in-state vendor who could charge a fee for that state-mandated service or refuse to provide it. Thus, while those laws undoubtedly had the *effect* of discriminating against interstate commerce (which should have sufficed to render them invalid under binding Supreme Court precedent), they

did not suffer from the same defect of granting a *facial* preference to in-state state vendors.⁸

The State protests that its regime was not “meant to promote California goods” or businesses. A.O.B. 23-24. But whether a law is discriminatory turns on *whether* it “favors in-state economic interests over out-of-state interests,” not why it does so. *Black Star Farms LLC v. Oliver*, 600 F.3d 1225, 1231 (9th Cir. 2010) (alteration in original) (quoting *Granholm*, 544 U.S. at 487). Even “a pure exercise of the police power to protect public safety,” A.O.B. 55, must satisfy strict scrutiny if it discriminates against interstate commerce, for the “Commerce Clause analysis is applicable to all police power regulation, including the core areas of health and safety protection.” *Conservation Force, Inc. v. Manning*, 301 F.3d 985, 993 n.7 (9th Cir. 2002). That a state is acting within its police powers means only that its law is not *ultra vires*; it does not excuse the discrimination.

It could hardly be otherwise, for “the view ... that [an] ordinance is valid simply because it professes to be a health [or safety] measure[] would mean that the Commerce Clause of itself imposes no limitations on state action ..., save for the rare instance where a state artlessly discloses an avowed purpose to discriminate against interstate goods.” *Dean Milk*, 340 U.S. at 354. The Supreme Court once again definitively rejected that proposition just this past year—and did so in the context of an article of commerce that the Constitution expressly empowers states to *restrict*. *See*

⁸ That likewise distinguishes both *Black Star Farms LLC v. Oliver*, 600 F.3d 1225 (9th Cir. 2010), and the other “face-to-face” cases on which the state relies, for those laws did not favor *in state*, in-person transactions over in-person transactions with a vendor in another state. *See* A.O.B. 54.

Tenn. Wine & Spirits Retailers Ass'n v. Thomas, 139 S. Ct. 2449, 2461 (2019). *A fortiori*, appeals to the police power cannot excuse discrimination against interstate commerce in an article that the Constitution expressly *protects*.

Because California's scheme discriminates on its face, Appellees need not "satisfy [the] higher evidentiary burden" that applies "when ... a statute is neither facially discriminatory nor motivated by an impermissible purpose." *Int'l Franchise Ass'n*, 803 F.3d at 405; *see* A.O.B. 50. The only remaining question, therefore, is whether the State can satisfy its heavy burden of overcoming the rule of virtually per se invalidity that applies to laws that discriminate against interstate commerce. The district court did not abuse its discretion in concluding that the State is unlikely to satisfy that extremely high bar.

As the court explained, while California has a strong interest in keeping ammunition out of the hands of dangerous individuals, it "has not offered any evidence at this stage that out-of-state ammunition businesses have been selling ammunition to prohibited persons in California." E.R.I 109. "Without concrete evidence that direct shipping" poses a genuine safety risk, the court was "left with the State[s] unsupported assertions," which the Supreme Court has emphatically instructed are not enough to justify discrimination against interstate commerce. E.R.I. 108 (quoting *Granholm*, 544 U.S. at 492). Even assuming the State *could* amass such evidence, it has so far failed to do so. The district court thus acted well within its discretion in concluding that, at this point, California's scheme likely violates the prohibition on discrimination against interstate commerce.

2. California's Ammunition Scheme Impermissibly Regulates Transactions Outside California's Borders

The district court was also well within its discretion in concluding that California's scheme likely violates the prohibition on extraterritorial regulation. The Commerce Clause prohibits states from "regulating commerce occurring wholly outside [their] borders." *Healy v. Beer Inst.*, 491 U.S. 324, 332 (1989). "Direct regulation occurs when a state law directly affects transactions that take place ... entirely outside of the state's borders." *Valley Bank of Nev. v. Plus Sys., Inc.*, 914 F.2d 1186, 1189-90 (9th Cir. 1990). That prohibition applies even if the transactions a state wants to regulate "ha[ve] effects within the State," and even if the "extraterritorial reach" of a law "was [not] intended by the legislature." *Healy*, 491 U.S. at 335-36. In short, state laws that directly regulate transactions that take place in other states are "virtually *per se* invalid" under the Commerce Clause. *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986). Indeed, this Court has struck down every state law to come before it that regulated out-of-state transactions. *See, e.g., Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608, 612-16 (9th Cir. 2018); *NCAA v. Miller*, 10 F.3d 635, 639 (9th Cir. 1993); *Sam Francis Found. v. Christie's, Inc.*, 784 F.3d 1320, 1323-24 (9th Cir. 2015) (en banc).

The district court correctly concluded—and certainly did not abuse its discretion in concluding—that California's scheme is likely to suffer the same fate. As the State acknowledges, *see* A.O.B. 51, if a California resident travels to Nevada and purchases ammunition through a face-to-face transaction with a Nevada seller who possesses the same federal license as a California Vendor, California still requires that ammunition to be shipped to a California Vendor before it can be delivered to the

purchaser—all for a fee, assuming the California Vendor is willing to accept shipment at all, which it not required to do. *See* Cal. Penal Code §§ 30312, 30314. The Challenged Provisions thus do not merely indirectly “affect[]” ammunition transactions “that take place across state lines”; they impose a California-law requirement on, and in doing so *directly regulate*, ammunition transactions “entirely outside of the state’s borders,” *Daniels Sharpsmart*, 889 F.3d at 614, in “per se violation of the Commerce Clause,” *Miller*, 10 F.3d at 640.

The State acknowledges, as it must, that a law that “directly regulates conduct that occurs wholly outside of a state’s borders is invalid per se under the dormant Commerce Clause.” A.O.B. 47. But it relegates its entire discussion of the extraterritoriality doctrine to a footnote, first claiming that “[t]he district court did not conduct an extraterritoriality analysis,” and next claiming that its extraterritorial regulation is permissible because its laws “apply only when the ammunition crosses California’s borders.” A.O.B. 48 n.10. It is wrong on both counts.

First, the district court clearly held that California’s scheme likely violates the prohibition on extraterritorial regulation. The court cited *Pharmaceutical Research & Manufacturers of America v. Alameda*, 768 F.3d 1037 (9th Cir. 2014), an extraterritoriality case, for the proposition that laws that “discriminate[] directly against interstate commerce *or directly regulate[] commerce*” “violate the Commerce Clause per se,” and then concluded that “Proposition 63 *does both*.” E.R.I 102-04 (emphases added). To the extent the court did not conduct a detailed analysis of the extraterritoriality issue, that is because the analysis is simple: The regime concededly (and facially) regulates

transactions that “occur[] wholly outside of a state’s borders,” which concededly “is invalid per se under the dormant Commerce Clause.” A.O.B. 47.

As for the State’s claim that its extraterritorial regulation is “permissible” because its laws “apply only when the ammunition crosses California’s borders,” A.O.B. 48 n.10, that is wrong too. To be sure, the State is correct that it “may regulate commercial relationships in which at least one party is located in California” when the transaction takes place. *Id.* (quoting *Chinatown Neighborhood Ass’n v. Harris*, 794 F.3d 1136, 1145 (9th Cir. 2015)). But the State claims the power here to regulate transactions in which *no* party is located in California when the transaction takes place—for example, a sale “at a physical store” in Arizona. A.O.B. 51. The State cites no case holding that it may regulate an out-of-state transaction just because the purchased product will wind up in California. Nor could it. After all, an en banc panel of this Court “easily conclude[d]” in *Sam Francis* that a California statute violated the Commerce Clause vis-à-vis art sales that took place outside of California, even though the statute applied *only when the seller was a California resident*. 784 F.3d at 1323. It did so because “the Commerce Clause forbids the application of a state statute to commerce that takes place wholly outside of the State’s borders, *whether or not the commerce has effects within the State*.” *Id.* (emphasis added) (quoting *Healy*, 491 U.S. at 336).

To the extent the State means to suggest that its regime is permissible because it regulates only the purchaser’s conduct of entering California with ammunition, that is highly debatable, but also irrelevant. “In determining whether the [statute] directly regulates interstate commerce, we focus our inquiry on the ‘practical effect’ of the statute.” *Greater L.A. Agency on Deafness, Inc. v. Cable News Network, Inc.*, 742 F.3d 414,

433 (9th Cir. 2014). And no matter how the State seeks to characterize its laws, there is no denying that they have the practical effect of “regulat[ing] a commercial transaction that ‘takes place wholly outside the boundaries of’” California, *Sam Francis*, 784 F.3d at 1323, as they not only commandeer out-of-state transactions just because they involve a California resident (as in *Sam Francis*), but (again as in *Sam Francis*) deem wholly out-of-state sales incomplete as a matter of California law unless and until another transaction occurs (here, a California Vendor processes the transaction; in *Sam Francis*, payment of a royalty). This is therefore not a case in which a law that has “significant out-of-state practical effects” may nonetheless be upheld because it regulates only “in-state conduct.” *Id.* at 1324. California has taken it upon itself to “directly regulate the conduct of the seller” in “transaction[s] that occur[] wholly outside the State.” *Id.* That extraterritorial regulation is beyond California’s power.

Why the State has regulated extraterritorially is irrelevant. No court has *ever* held that a state may regulate out-of-state transactions, no matter how important an interest the state claims. While “states may regulate to minimize the in-state harm caused by products sold in-state,” they “cross” an uncrossable constitutional line when they seek to actually “regulate[] transactions in other states.” *Rocky Mt. Farmers Union v. Corey*, 913 F.3d 940, 952 (9th Cir. 2019).

The likely invalidity of California’s regime becomes more clear when one considers “what effect would arise if not one, but many or every, State adopted similar legislation.” *Healy*, 491 U.S. at 336. If every state were to adopt its own version of California’s regime, the interstate ammunition market would quickly disappear. Everyone would buy ammunition only in their home states, lest they be forced to

jump through innumerable hoops and pay additional costs. Simply put, “the enactment of a similar statute by each one of the States composing the Union would result in the destruction of commerce among the several states.” *Minnesota v. Barber*, 136 U.S. 313, 321 (1890).

Indeed, the only regime that bears any resemblance to California’s novel regime for regulating ammunition is the restrictive regime for alcohol distribution that exists in some states. But it took a constitutional amendment—actually two—to authorize aspects of that regime that would otherwise blatantly violate the Commerce Clause. *Compare* U.S. Const. amend. XXI, § 2 (prohibiting transportation of importation of alcohol into a state “in violation of the laws thereof”), *with, e.g., Leisy v. Hardin*, 135 U.S. 100 (1890) (states’ ability to prohibit domestic production and manufacture did not allow them to prohibit interstate commerce in alcoholic beverages). And even with a constitutional amendment expressly authorizing restrictive state laws, the Supreme Court has still invalidated state alcohol laws that are as expressly discriminatory as the California ammunition law. *See supra*. The notion that California can impose its discriminatory and extraterritorial regime in the absence of comparable constitutional authority is a non-starter. The district court thus plainly did not abuse its discretion by reaching the preliminary conclusion that California’s regime likely violates the Commerce Clause twice over.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN FINDING THE REMAINING PRELIMINARY INJUNCTION FACTORS SATISFIED

First, “[t]he deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting

Elrod v. Burns, 427 U.S. 347, 373 (1976)). The State claims that “[i]t is not clear whether that principle extends to Second Amendment and dormant Commerce Clause claims.” A.O.B. 60. But it cites no case treating these claims differently for purposes of finding irreparable harm and simply ignores that the very case reaffirming that the Second Amendment protects a fundamental right rejected the notion that it could be treated as a weak sibling among the rights enshrined in the Constitution. *See McDonald v. City of Chicago*, 561 U.S. 742, 778-79 (2010). Not coincidentally, the State ignores cases that have treated the loss of such constitutional rights as irreparable harm. E.R.I 110-11 (citing *Grace v. District of Columbia*, 187 F. Supp. 3d 124, 150 (D.D.C. 2016)) (recognizing irreparable harm in Second Amendment context); *Rocky Mt. Farmers Union v. Goldstene*, 843 F. Supp. 2d 1071, 1103-04 (E.D. Cal. 2011) (recognizing irreparable harm in Commerce Clause context).

The State next claims the district court improperly relied on “speculative injury” to third parties. A.O.B. 60. In fact, the court found irreparable injury because the State’s own evidence showed “[t]housands of law-abiding residents [had been] completely” barred from lawfully obtaining ammunition under the State’s unconstitutional scheme. E.R.I 111. Those are real harms, and they have been suffered by the very members CRPA is representing, not just by third parties. E.R.VII 1557-60; *see also supra* Argument Part I.A.2-4.

As for the out-of-state retailers, the State claims that their failure to move to enjoin the direct-sales restrictions for 16 months “ ‘implies a lack of urgency and irreparable harm.’ ” A.O.B. 61 (quoting *Oakland Trib., Inc. v. Chron. Publ’g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985)). Setting aside that urgency and irreparability are not the

same, the State ignores the fact that out-of-state retailers' injury radically worsened in July 2019, when in-state retailers largely stopped processing the in-person transactions necessary under state law once the background check scheme took effect. E.R.VI 1549-55. Regardless, as the State obliquely admits, "delay" in bringing a motion for preliminary injunction is merely "a factor to be considered," *Lydo Enterps., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984). Indeed, the Ninth Circuit held that it "would be loath to withhold relief solely on that ground." *Id.* at 1214 (finding a five-year delay not dispositive).⁹

When challenging government action that affects the exercise of constitutional rights, "[t]he balance of equities and public interest . . . tip sharply in favor of enjoining the" law. *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). After all, neither the public nor the State can "suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); see *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Moreover, even assuming public safety concerns could override the public interest in enforcing the Constitution, the district court plainly did not abuse its discretion in concluding that the equities weigh in favor of preliminarily enjoining a law that deprives tens of thousands of law-abiding people of a constitutional right in service of stopping the .12% of transactions attempted by prohibited persons. E.R.I 113-14.

⁹ What is more, preliminary relief from the background check requirement necessitates similar relief from the direct sales restriction, for there is zero reason to discriminate against out-of-state retailers if background checks are no longer needed.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's order.

Date: July 31, 2020

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- complies with the length limit designated by court order dated .
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature **Date**

(use "s/[typed name]" to sign electronically-filed documents)

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ADDENDUM

ADDENDUM TO APPELLEES' ANSWERING BRIEF

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11 CCR 4045.1

This document is current through Register 2020, No. 28, July 10, 2020

CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 4. DOCUMENTATION REQUIREMENTS FOR FIREARMS AND AMMUNITION ELIGIBILITY CHECKS > ARTICLE 2. ADDITIONAL DOCUMENTATION REQUIREMENTS

§ 4045.1. Additional Documentation Requirements for Eligibility Checks with Federal Non-Compliant California Driver License or Identification Card

This section applies to all firearms and ammunition eligibility checks, including any eligibility check described in Division 5. For the purposes of this section, eligibility checks" refers to background checks based on any application or report for which an applicant is required to submit a driver license or identification card, or the number from a driver license or identification card, so that the Department of Justice may determine the applicant's eligibility to possess a firearm or ammunition under state or federal law.

(a) For all eligibility checks, a copy of the applicant's California driver license or identification card, or out-of-state driver license, if applicable, shall be submitted, as specified in subdivisions (d) through (g).

(b) For all eligibility checks, if the applicant presents a federal non-compliant California driver license or identification card with the notation FEDERAL LIMITS APPLY" on the front, the applicant shall also submit proof of lawful presence in the United States, as specified in subdivisions (d) through (g), in the form of one of the following documents:

- (1) Valid, unexpired U.S. passport or passport card.
- (2) Certified copy of U.S. birth certificate (issued by a city, county, or state vital statistics office). Abbreviated or Abstract certificates are NOT accepted.
- (3) Certification of Birth Abroad (FS-545), Certification of Report of Birth (DS-1350) or Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240), issued by the U.S. Department of State.
- (4) Valid, unexpired foreign passport with valid U.S. immigrant visa and approved Record of Arrival/Departure (I-94) form.
- (5) Certified copy of birth certificate from a U.S. Territory.
- (6) Certificate of Naturalization or U.S. Citizenship.

(7)Valid, unexpired Permanent Resident Card.

(c)For all eligibility checks, if the applicant's name as it appears on the federal non-compliant California driver license or identification card differs from the name on the proof of lawful presence document submitted in accordance with subdivision (b), the applicant shall also submit, as specified in subdivisions (d) through (g), one of the following certified documents:

(1)An adoption document that contains the legal name of the applicant as a result of the adoption.

(2)A name change document that contains the applicant's legal name both before and, as a result of, the name change.

(3)A marriage certificate.

(4)A dissolution of marriage document that contains the legal name of the applicant as a result of the court action.

(5)A certificate, declaration or registration document verifying the formation of a domestic partnership.

(6)A dissolution of domestic partnership document that contains the legal name of the applicant as a result of the court action.

(d)Applications or reports submitted in a paper format.

For eligibility checks based on an application or report submitted to the Department of Justice in a paper format, the documents required in subdivisions (a) through (c) shall be submitted along with the paper application. Do not send any original documentation when submitting the paper application. These applications and reports include:

(1)Certificate of Eligibility applications, pursuant to [Penal Code section 26710](#) .

(2)Firearm Ownership Reports:

(A)New Resident Report of Firearm Ownership, form BOF 4010A (Rev. 01/2020), pursuant to [Penal Code section 27560](#) .

(B)Firearm Ownership Report, form BOF 4542A (Rev. 01/2020), pursuant to [Penal Code section 28000](#) .

(C)Curio or Relic Firearm Report, form BOF 4100A (Rev. 01/2020), pursuant to

[Penal Code section 27565](#) .

(D)Collector In-State Acquisition of Curio or Relic Long Gun Report, form BOF 961 (Rev. 01/2020), pursuant to

[Penal Code section 27966](#) .

(E)Report of Operation of Law or Intra-Familial Firearm Transaction, form BOF 4544A (Rev. 01/2020), pursuant to

[Penal Code sections 27875](#) and
[27920](#) .

(3)The application forms referenced in section 4142 of Chapter 7 of this Division 5 and amended for purposes of this division as follows: Dangerous Weapons License/Permit(s) Application, form BOF 030 (Rev. 01/2020), or Dangerous Weapons License/Permit(s) Renewal Application, form BOF 031 (Rev. 01/2020). These forms include options to apply for the following licenses/permits:

(A)Assault Weapon/.50 BMG Rifle Permit, pursuant to

[Penal Code sections 31000](#) and
[31005](#) .

(B)Short-Barreled Shotgun/Rifle Permit, pursuant to

[Penal Code sections 33300](#) and
[33305](#) .

(C)Destructive Device Permit, pursuant to

[Penal Code sections 18900](#) and
[18905](#) .

(D)Machinegun Permit, pursuant to

[Penal Code sections 32650](#) and
[32655](#) .

(E)Machinegun License, pursuant to

[Penal Code sections 32700](#) to
[32715](#) .

(4)Entertainment Firearms Permit Application, form BOF 051 (Rev. 01/2020), hereby incorporated by reference, pursuant to

[Penal Code section 29500](#) .

(5)Personal Firearms Eligibility Check Application, form BOF 116 (Rev. 01/2020), hereby incorporated by reference, pursuant to

[Penal Code section 30105](#) .

(e) Applications or reports submitted electronically via the California Firearms Application Reporting System (CFARS).

For eligibility checks based on an application or report submitted to the Department of Justice electronically via CFARS, the documents required in subdivisions (a) through (c) shall be uploaded to CFARS as prompted during the application or reporting process. These applications and reports include:

- (1) Certificate of Eligibility applications, pursuant to [Penal Code section 26710](#) and Chapter 3 of this Division 5.
- (2) Unique Serial Number Applications, pursuant to [Penal Code section 29182](#) and Chapter 41 of this Division 5.
- (3) Firearm Ownership Reports, including:
 - (A) New Resident Report of Firearm Ownership, pursuant to [Penal Code section 27560](#) .
 - (B) Firearm Ownership Report, pursuant to [Penal Code section 28000](#) .
 - (C) Curio or Relic Firearm Report, pursuant to [Penal Code section 27565](#) .
 - (D) Collector In-State Acquisition of Curio or Relic Long Gun Report, form pursuant to [Penal Code section 27966](#) .
 - (E) Report of Operation of Law or Intra-Familial Firearm Transaction, pursuant to [Penal Code sections 27875](#) and [27920](#) .

(f) Applications or reports submitted electronically via the Dealer Record of Sale (DROS) Entry System (DES), including applications or reports submitted pursuant to Chapters 8 and 11 of this Division 5.

For eligibility checks based on applications or reports submitted to the Department of Justice electronically via the DES, the firearm dealer or ammunition vendor shall examine the applicant's driver license or identification card. If the applicant's California driver license or identification card is federal non-compliant with the notation "FEDERAL LIMITS APPLY" on the front, the firearm dealer or ammunition vendor shall require the applicant to submit a copy of the document required in subdivision (b), as well as a copy of the document required in subdivision (c) if applicable. The firearm dealer or ammunition

vendor shall retain a copy of the FEDERAL LIMITS APPLY driver license or identification card, as well as the supporting documents, as part of the permanent record. These applications and reports include:

(1)Application(s) to purchase a firearm. The firearm dealer shall confirm compliance with this subdivision on DES, as necessary during the application or reporting process. The firearm dealer shall keep a copy of the document(s) required in subdivisions (a) through (c) as part of the permanent record of the transaction described in

[Penal Code section 28215](#), subdivision (c).

(2)Applications to purchase ammunition, as described in [Penal Code section 30370](#). The firearm dealer or ammunition vendor shall confirm compliance with this subdivision on DES, as necessary during the application or reporting process. The firearm dealer or ammunition vendor shall keep a copy of the document(s) required in subdivisions (a) through (c).

(g)Applications or reports submitted to other agencies that include fingerprint data to be used by the Department of Justice to determine the applicant's eligibility to possess a firearm or ammunition under state or federal law.

For eligibility checks based on applications or reports submitted to other agencies that include fingerprint data to be used by the Department of Justice to determine the applicant's eligibility to possess a firearm or ammunition under state or federal law, if the applicant presents a federal non-compliant California driver license or identification card with the notation "FEDERAL LIMITS APPLY" on the front, the agency shall require the applicant to submit copies of the documents required in subdivision (b), as well as a copy of the document required in subdivision (c) if applicable. The agency shall keep a copy of the documents required in subdivisions (a) through (c) as part of the permanent record of the application. The Department of Justice may request a copy of the document(s) at a future date. Applicants of these applications and reports include:

(1)Peace officer applicants, custodial officers, or transportation officers, pursuant to

[Penal Code section 832.15](#).

(2)Peace officers, pursuant to

[Penal Code section 832.16](#).

(3) Applicants for admission to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of firearms, pursuant to

[Penal Code section 13511.5](#)

(4) Applicants for an explosives permit, pursuant to

[Health & Safety Code section 12101](#)

Statutory Authority

AUTHORITY:

Note: Authority cited: Sections

[28060](#)

,

[28100](#)

,

[28155](#)

,

[28215](#)

and

[28220, Penal Code](#)

. Reference: Sections

[832.15](#)

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[832.16](#)

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[13511.5](#)

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[16400](#)

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[18900](#)

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[18905](#)

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[23000](#)

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[26150](#)

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[27875](#)

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[27920](#)

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[28160](#)

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[28215](#)

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[28220](#) ,
[28250](#) ,
[29182](#) ,
[29500](#) ,
[30105](#) ,
[30370](#) ,
[31000](#) ,
[31005](#) ,
[32650](#) ,
[32655](#) ,
[32700](#) ,
[32705](#) ,
[32710](#) ,
[32715](#) ,
[33300](#) ,
[33305](#) and
 33850, *Penal Code* ;
[Section 12101, Health and Safety Code](#) ; and
[Section 922, Title 18, United States Code](#) .

History

HISTORY:

1. New article 2 (section 4045.1) and section filed 6-27-2019 as an emergency; operative 7-1-2019 (Register 2019, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-30-2019 or emergency language will be repealed by operation of law on the following day.

2. Change without regulatory effect amending subsection (d)(2)(A)-(E) filed 12-17-2019 pursuant to *section 100, title 1, California Code of Regulations* (Register 2019, No. 51).

3. New article 2 (section 4045.1) and section refiled 12-19-2019 as an emergency; operative 12-31-2019 (Register 2019, No. 51). A Certificate of Compliance

must be transmitted to OAL by 3-30-2020 or emergency language will be repealed by operation of law on the following day.

4. Editorial correction implementing 12-17-2019 nonsubstantive amendments (Register 2020, No. 13).

5. New article 2 (section 4045.1) and section refiled 3-25-2020 as an emergency; operative 3-31-2020 (Register 2020, No. 13). A Certificate of Compliance must be transmitted to OAL by 6-29-2020 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 3-25-2020 order, including amendment of subsections (b)(2), (d) and (d)(2)(A)-(d)(3), new subsections (d)(4)-(5) and amendment of subsections (e) and (f), transmitted to OAL 3-18-2020 and filed 4-27-2020; amendments operative 4-27-2020 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2020, No. 18).

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11 CCR 4260

This document is current through Register 2020, No. 28, July 10, 2020

CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 10. AMMUNITION

§ 4260. Ammunition Vendor License Applications

(a) Applicants for an initial ammunition vendor license must complete and submit Department of Justice Ammunition Vendor License (Non-Firearms Dealer), form BOF 1021 (Rev. 12/2019), which is hereby incorporated by reference. The application must be submitted with the fee specified in section 4261 and a copy of the following:

- (1) Any regulatory or business license required by local government.
- (2) Valid seller's permit issued by the California Department of Tax and Fee Administration.
- (3) Federal Firearms License if the applicant is federally licensed.
- (4) Certificate of Eligibility pursuant to [Penal Code section 26710](#).

(b) Applicants for renewal of an ammunition vendor license must complete and submit Department of Justice Ammunition Vendor License Renewal Fee Transmittal, form BOF/CAV-0012 (Orig. 01/2018), which is hereby incorporated by reference, with the fee specified in section 4261.

(c) A firearms dealer licensed pursuant to [Penal Code sections 26700](#) to [26915](#) is automatically deemed a licensed ammunition vendor pursuant to [Penal Code section 30385\(d\)](#) and is not required to submit an application for an ammunition vendor license.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30385 and 30395, Penal Code](#). Reference: Sections [26700](#), [30385](#) and [30395, Penal Code](#).

History

HISTORY:

11 CCR 4260

1. New chapter 10 (sections 4260-4264) and section filed 1-2-2018; operative 1-2-2018 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2018, No. 1).
2. Change without regulatory effect amending subsection (a) filed 12-17-2019 pursuant to *section 100, title 1, California Code of Regulations* (Register 2019, No. 51).
3. Editorial correction implementing 12-17-2019 nonsubstantive amendments (Register 2020, No. 13).
4. Amendment of chapter heading filed 6-22-2020; operative 10-1-2020 (Register 2020, No. 26).

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11 CCR 4261

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§ 4261. Ammunition Vendor License Application Fee and Term Length

(a) The annual application fee for an ammunition vendor license (initial and renewal) is \$ 198 per location if the vendor is not on the Centralized List of Firearm Dealers.

(b) The term of an ammunition vendor license is one year from the date of issuance.

(c) Ammunition vendors must submit to the Department of Justice copies of renewals of the permit and licenses specified in section 4260, subdivisions (a)(1), (a)(2), and (a)(3), no later than 30 days after the permit or license expires. Failure to do so will invalidate the ammunition vendor license until a copy of the renewal is received by the Department of Justice.

(d) Ammunition vendors must maintain an active Certificate of Eligibility. Failure to do so will invalidate the ammunition vendor license until the Certificate of Eligibility has been renewed pursuant to section 4037.

(e) Ammunition vendor licenses will be automatically renewed for vendors who maintain active status on the Centralized List of Firearms Dealers.

Statutory Authority

AUTHORITY:

Note: Authority cited: Sections [30385](#), [30390](#) and [30395, Penal Code](#). Reference: Sections [30385](#), [30390](#) and [30395, Penal Code](#).

History

HISTORY:

1. New section filed 1-2-2018; operative 1-2-2018 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2018, No. 1).

2. Amendment of subsection (c), new subsection (d) and subsection relettering filed 6-22-2020; operative 10-1-2020 (Register 2020, No. 26).

11 CCR 4261

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11 CCR 4262

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§ 4262. Display of Ammunition

Pursuant to [Penal Code section 30350](#), ammunition shall not be displayed for sale or transfer in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor. Ammunition displayed in a shopping area open to the public is not considered "accessible" provided it is in a locked container (e.g. display case, cabinet, cage).

Statutory Authority

AUTHORITY:

Note: Authority cited: Sections [30347](#), [30385](#) and [30350](#), *Penal Code*. Reference: [Sections 30347 and 30350, Penal Code](#).

History

HISTORY:

1. New section filed 1-2-2018; operative 1-2-2018 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2018, No. 1).

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§ 4263. Vendor Fee for Processing a Private Party (Non-Vendor) Ammunition Sale

(a) In addition to any applicable Department of Justice fee, an ammunition vendor may charge the purchaser a fee(s) for processing the sale of ammunition between two private parties as follows:

- (1) If the purchaser will be present for immediate delivery of the ammunition, the fee shall not exceed five dollars (\$ 5).
- (2) If the purchaser will not be present for immediate delivery of the ammunition, the vendor may charge an additional storage fee as agreed upon with the purchaser prior to the vendor receiving the ammunition.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30312 and 30385, Penal Code](#). Reference: [Section 30312, Penal Code](#).

History

HISTORY:

1. New section filed 1-2-2018; operative 1-2-2018 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2018, No. 1).
2. Amendment of subsection hierarchy filed 6-22-2020; operative 10-1-2020 (Register 2020, No. 26).

End of Document

11 CCR 4264

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 10. AMMUNITION

§ 4264. Suspension and Forfeiture of Ammunition Vendor's License

- (a) An ammunition vendor's license may be suspended for a period of up to six months for a violation of these regulations.
- (b) An ammunition vendor's license may be forfeited for a breach of any of the prohibitions and requirements in [Penal Code sections 30300](#) through [30365](#).
- (c) All hearings related to a suspension or forfeiture shall be conducted in accordance with [Government Code section 11500](#) et. seq.
- (d) An ammunition vendor whose license is forfeited may not re-apply for a license earlier than one year from the effective date of the forfeiture.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30385 and 30395, Penal Code](#). Reference: Sections [30300](#), [30305](#), [30306](#), [30312](#), [30314](#), [30342](#), [30345](#), [30347](#), [30348](#), [30350](#), [30352](#), [30355](#), [30357](#), [30360](#), [30362](#), [30363](#), [30365](#) and [30395, Penal Code](#).

History

HISTORY:

1. New section filed 1-2-2018; operative 1-2-2018 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2018, No. 1).

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11 CCR 4300

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 1. GENERAL

§ 4300. Title and Scope

This chapter shall be known as the "Department of Justice Regulations for Ammunition Purchases or Transfers," and may be cited as such and referred to herein as "these regulations." The provisions of these regulations shall provide the directives for an individual to purchase or transfer ammunition into an individual's possession on or after July 1, 2019.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30352 and 30370, Penal Code](#). Reference: Sections [30305](#), [30312](#), [30314](#), [30352](#) and [30370, Penal Code](#).

History

HISTORY:

1. New chapter 11 (articles 1-7, sections 4300-4309), article 1 (sections 4300-4301) and section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

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11 CCR 4301

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 1. GENERAL

§ 4301. Definition of Key Terms

- (a)"AFS" means the Department's Automated Firearms System.
- (b)"Ammunition vendor" means a person or entity having a valid license to sell ammunition, issued pursuant to [Penal Code section 30385](#).
- (c)"ATN" means Ammunition Transaction Number issued by the Department.
- (d)"Automated Firearms System" is the name of a repository of firearm records maintained by the Department, as established by [Penal Code section 11106](#).
- (e)"Basic Ammunition Eligibility Check" means the Department's ammunition eligibility check as prescribed by [Penal Code section 30370](#), subdivision (c). The Department shall conduct a Basic Ammunition Eligibility Check to authorize a California resident for a single ammunition transaction or purchase.
- (f)"Certificate of Eligibility" or "COE" means a certificate issued pursuant to [Penal Code section 26710](#), which states that the Department has checked its records and determined that the applicant was not prohibited from acquiring or possessing firearms at the time the check was performed.
- (g)"CFARS" means the Department's California Firearms Application Reporting System. An individual can access the CFARS website at the following web address: <https://cfars.doj.ca.gov/login.do>.
- (h)"Department" means the California Department of Justice.
- (i)"Dealer Record of Sale Entry System" or "DES" means the Department's website that an ammunition vendor will use to submit an ammunition purchaser's or transferee's information to the Department before the Department can approve an ammunition purchase or transfer. An ammunition vendor can access the DES website at the following web address: <https://des.doj.ca.gov/login.do>.
- (j)"Firearms dealer" means a person having a valid license to sell firearms issued pursuant to [Penal Code section 26700](#).

(k)"Firearms eligibility check" means a state and federal background check, conducted pursuant to [Penal Code section 28220](#), that is used to determine an individual's eligibility to possess, receive, own, or purchase a firearm.

(l)"Head of the agency" means the chief of police or the director of public safety for a police department, the sheriff for a county sheriff's office, the head of an agency or their designee for a state law enforcement agency, and the manager in charge of any local field office for a federal law enforcement agency.

(m)"Prohibited Armed Persons File" means the database established by [Penal Code section 30000](#).

(n)"Purchaser or transferee" means an individual purchasing or transferring ammunition.

(o)"Standard Ammunition Eligibility Check" means the Department's ammunition eligibility check as prescribed by [Penal Code section 30370](#), subdivision (b).

(p)"Sworn federal law enforcement officer's credential" means identification indicating an individual is a sworn federal law enforcement officer.

(q)"Sworn state or local peace officer's credential" means identification indicating an individual is a sworn state or local peace officer pursuant to Part 2, Chapter 4.5, of the Penal Code (commencing with section 830).

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30352 and 30370, Penal Code](#). Reference: Sections [11106](#), [16150](#), [16151](#), [26710](#), [30352](#), [30370](#) and [30385, Penal Code](#).

History

HISTORY:

1. New section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

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11 CCR 4302

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 2. AMMUNITION ELIGIBILITY CHECKS: STANDARD AND BASIC

§ 4302. Standard Ammunition Eligibility Check (AFS Match)

(a) A purchaser or transferee is authorized to purchase ammunition if their information matches an entry in the Automated Firearm System and does not match an entry in the Prohibited Armed Persons File.

(1) A purchaser or transferee may request, through an ammunition vendor, that the Department conduct a Standard Ammunition Eligibility Check to determine if the ammunition purchaser or transferee qualifies for this authorization.

(b) As authorized by [Penal Code section 30370](#), subdivision (e), the fee for a Standard Ammunition Eligibility Check is \$ 1.00.

(c) The ammunition vendor shall collect the purchaser's or transferee's name, date of birth, current address, and driver's license or other government identification number in the manner described in [Penal Code section 28180](#), and telephone number, and enter this information into the DES website.

(d) Upon the Department's completion of the Standard Ammunition Eligibility Check, the Department shall update the purchaser's or transferee's DES record to instruct the ammunition vendor to approve or reject the purchase or transfer.

(e) If the purchase or transfer is rejected, the ammunition vendor shall provide the purchaser or transferee with an ATN that can be used to obtain the reason for the rejection through the Department's CFARS website.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30352 and 30370, Penal Code](#). Reference: Sections [28180](#), [30352](#) and [30370, Penal Code](#).

History

HISTORY:

1. New article 2 (sections 4302-4303) and section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

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§ 4303. Basic Ammunition Eligibility Check (Single Transaction or Purchase)

(a) A purchaser or transferee is authorized to purchase ammunition if they are not prohibited from purchasing or possessing ammunition, subsequent to affirmation by the Department.

(1) A purchaser or transferee may request, through an ammunition vendor, that the Department conduct a Basic Ammunition Eligibility Check to determine if the purchaser or transferee qualifies for this authorization.

(2) A purchaser or transferee may instead seek authorization by following the procedure set forth by section 4302, 4304, 4305, or 4306, as applicable.

(b) As authorized by [Penal Code section 30370](#), subdivision (c), the fee for a Basic Ammunition Eligibility Check is \$ 19.00.

(c) The ammunition vendor shall collect the ammunition purchaser's or transferee's name, date of birth, current address, gender, hair color, eye color, height, weight, and driver's license or other government identification number in the manner described in [Penal Code section 28180](#), and telephone number, United States citizenship status, federal Alien Registration Number or I-94 (if applicable), place of birth, alias name(s), and race, and enter this information into the DES website.

(d) The ammunition vendor will provide the purchaser or transferee an ATN to monitor the status of the Basic Ammunition Eligibility Check through the Department's CFARS website.

(1) An approved Basic Ammunition Eligibility Check can only be used for one ammunition purchase or transfer, and the approval expires 30 calendar days from when it is issued.

(2) If the Basic Ammunition Eligibility Check is denied, the Department shall notify the purchaser or transferee of the reason for the denial via U.S. Mail.

(e) Upon the Department's completion of a Basic Ammunition Eligibility Check, the Department shall update the purchaser's or transferee's DES record.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30352 and 30370, Penal Code](#). Reference: Sections [28180](#), [30352](#) and [30370, Penal Code](#); and [Section 922, Title 18, United States Code](#).

History

HISTORY:

1. New section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

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11 CCR 4304

This document is current through Register 2020, No. 28, July 10, 2020

CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 3. PURCHASING OF A FIREARM AND AMMUNITION IN A SINGLE TRANSACTION

§ 4304. Firearms Eligibility Check

(a) When an individual is purchasing or transferring a firearm and ammunition in the same transaction, the Department shall complete a firearms eligibility check before the purchaser or transferee can take possession of the firearm or ammunition.

(b) Except as provided in subdivision (c), a purchaser or transferee of a firearm and ammunition in the same transaction shall only pay the fee for the firearms eligibility check as prescribed in section 4001 of this title.

(c) If the purchaser or transferee wants to take possession of the ammunition before the Department completes the firearms eligibility check, the purchaser or transferee shall conduct a separate transaction following the procedure set forth by section 4302, 4303, 4305, or 4306, as appropriate, and pay any associated fee prior to taking possession of the ammunition.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Section 30352, Penal Code](#). Reference: Sections [28220](#), [30352](#) and [30370, Penal Code](#).

History

HISTORY:

1. New article 3 (section 4304) and section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

11 CCR 4304

End of Document

11 CCR 4305

This document is current through Register 2020, No. 28, July 10, 2020

CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 4. COE VERIFICATION PROCESS

§ 4305. COE Verification Process

(a) A purchaser or transferee is authorized to purchase ammunition if they hold a current Certificate of Eligibility, subsequent to verification by the Department.

(1) A purchaser or transferee may request, through an ammunition vendor, that the Department conduct a COE Verification to determine if the purchaser or transferee qualifies for this authorization.

(b) As authorized by [Penal Code section 30370](#), subdivision (e), the fee for COE Verification is \$ 1.00.

(c) The ammunition vendor shall collect the ammunition purchaser's or transferee's name, date of birth, current address, and driver's license or other government identification number in the manner described in [Penal Code section 28180](#), telephone number, and COE number, and enter the information into the DES website.

(d) Upon the Department's completion of the COE Verification, the Department shall update the purchaser's or transferee's DES record to instruct the ammunition vendor to approve or reject the ammunition purchase or transfer.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30352 and 30370, Penal Code](#). Reference: Sections [26710](#), [28180](#) and [30370, Penal Code](#).

History

HISTORY:

1. New article 4 (section 4305) and section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

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11 CCR 4306

This document is current through Register 2020, No. 28, July 10, 2020

CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 5. AMMUNITION PURCHASES OR TRANSFERS; EXEMPTED INDIVIDUALS

§ 4306. Ammunition Purchases or Transfers for Exempted Individuals

(a)The following types of identification will properly identify an individual who is exempt pursuant to [Penal Code section 30352](#), subdivision (e), from Department approval to purchase or transfer ammunition.

(1)An ammunition vendor shall present a valid Ammunition Vendor License issued pursuant to [Penal Code section 30385](#).

(2)A person who is on the centralized list of exempted federal firearms licensees maintained by the Department shall present a Department-issued Listing Acknowledgement Letter indicating that the individual is currently on the centralized list of exempted federal firearms licensees.

(3)A gunsmith shall present a valid Type 01 Federal Firearms License.

(4)A wholesaler shall present a valid Type 01 Federal Firearms License.

(5)A manufacturer of firearms shall present a valid Type 07 Federal Firearms License.

(6)An importer of firearms or ammunition shall present a valid Type 08 Federal Firearms License.

(7)A manufacturer of ammunition shall present a valid Type 06 Federal Firearms License.

(8)An authorized law enforcement representative of a city, county, city and county, or state or federal government shall present written authorization from the head of the agency authorizing the ammunition purchase or transfer, as described by [Penal Code section 30352](#), subdivision (e)(7).

(9)A properly identified sworn peace officer, as defined in Chapter 4.5 of Title 3 of Part [2 of the Penal Code](#), who is authorized to carry a firearm in the course and scope of the officer's duties, shall present both:

(A)A sworn state or local peace officer's credential, and

(B) Verifiable written certification from the head of the agency, as described by [Penal Code section 30352](#), subdivision (e)(8)(B)(i). The verifiable written certification from the head of the agency expires 30 days after issuance.

(10) A properly identified sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties, shall present both:

(A) A sworn federal law enforcement officer's credential, and

(B) Verifiable written certification from the head of the agency, as described by [Penal Code section 30352](#), subdivision (e)(8)(B)(i). The verifiable written certification from the head of the agency expires 30 days after issuance.

(b) For persons identified pursuant to subdivisions (a)(9) and (10) of this section, the ammunition vendor shall keep a photocopy of the front and back of the credential and the identification document provided pursuant to subdivision (c) of this section, along with the original verifiable written certification from the head of the agency. The ammunition vendor shall make a copy of these records available to the Department upon request.

(1) If the law enforcement agency does not allow photocopies to be made of the credential, the ammunition vendor shall retain a business card from the sworn law enforcement officer after personally viewing the credential.

(c) At the time of delivery, the ammunition vendor COE holder, authorized associate, or salesperson shall require the purchaser or transferee to provide an identification document that meets the requirements of [Penal Code section 16300](#), to verify that the person who is receiving delivery of the ammunition is the person exempted pursuant to [Penal Code section 30352](#), subdivision (e).

(d) Once the ammunition vendor has verified that the individual is exempt from Department approval to purchase or transfer ammunition, the ammunition vendor may process an ammunition purchase or transfer without Department approval.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Section 30352, Penal Code](#). Reference: [Section 30352, Penal Code](#).

History

HISTORY:

1. New article 5 (section 4306) and section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

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11 CCR 4307

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 6. TELEPHONIC ACCESS FOR AMMUNITION VENDORS

§ 4307. Telephonic Access for Ammunition Vendors

(a) Ammunition vendors without access to an Internet connection due to their telephone service provider's, or other Internet service providers' inability to provide access to an Internet connection at their place of business may acquire telephonic access to the Department, for the Department to manually determine if a purchaser or transferee is eligible to own or possess ammunition. Ammunition vendors seeking telephonic access to the Department shall complete an Ammunition Vendor (Non-Firearms Dealer) Application for Telephonic Approval, Form BOF 1020 (Rev. 12/2019), which is hereby incorporated by reference. Telephonic access to the Department will be available during the Department's Customer Support Center business hours.

(b) Ammunition vendors shall acquire documentation from their telephone/Internet service provider stating that the service provider does not offer Internet service at the ammunition vendor's place of business.

(c) After the ammunition vendor has completed the application for telephonic access, the ammunition vendor shall mail the Ammunition Vendor (Non-Firearms Dealer) Application for Telephonic Approval, Form BOF 1020 (Rev. 12/2019), and the documentation in subdivision (b) of this section to the Department at the following address:

Department of Justice
Bureau of Firearms
P.O. Box 160487
Sacramento, California 95816

(d) The Department shall notify the ammunition vendor via U.S. Mail of the Department's determination to approve or deny the Ammunition Vendor (Non-Firearms Dealer) Application for Telephonic Approval, Form BOF 1020 (Rev. 12/2019).

Statutory Authority

AUTHORITY:

Note: Authority cited: [Section 30370, Penal Code](#). Reference: [Section 30370, Penal Code](#).

History

HISTORY:

1. New article 6 (section 4307) and section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).
2. Change without regulatory effect amending subsections (a) and (c)-(d) filed 12-17-2019 pursuant to *section 100, title 1, California Code of Regulations* (Register 2019, No. 51).
3. Editorial correction implementing 12-17-2019 nonsubstantive amendments (Register 2020, No. 13).

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11 CCR 4308

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 7. DELIVERY OF AMMUNITION AND BILLING

§ 4308. Delivery of Ammunition Following DES Submission

(a) If the Department approves an ammunition purchase or transfer as described by sections 4302, 4303 or 4305 of these regulations, the DES transaction record will change from "Pending" to "Approved."

(b) Ammunition may be delivered to the purchaser or transferee only if the status of the DES transaction record is "Approved."

(c) At the time of delivery, the ammunition vendor COE holder, authorized associate, or salesperson shall do the following:

(1) Require the purchaser or transferee to provide an identification document that meets the requirements of [Penal Code section 16300](#), to verify that the person who is receiving delivery of the ammunition is the person authorized to purchase ammunition.

(2) Access the approved DES ammunition transaction by the name of the purchaser or transferee, and submit the ammunition sale information required by [Penal Code section 30352](#), subdivision (a).

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 30352 and 30370, Penal Code](#). Reference: [Sections 30352 and 30370, Penal Code](#).

History

HISTORY:

1. New article 7 (sections 4308-4309) and section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

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11 CCR 4309

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§ 4309. Billing, Payment, and Suspension for Non-Payment

(a) Monthly billing statements for the previous month's ammunition eligibility check and COE verification activity will be delivered electronically via DES to the ammunition vendor's account on the first day of each month.

(b) Payment shall be made using a major credit card or debit card. The balance due as indicated on the monthly billing statement shall be paid in full within 30 days of the billing statement date.

(c) If payment for the previous month's ammunition eligibility check and COE verification activity is not made within 30 days, the ammunition vendor's access (including all COE holders and employees) to DES will be suspended until full payment for the past due amount is received.

(d) While suspended, an ammunition vendor will be unable to process or conduct an ammunition purchase or transfer but will maintain their status as a licensed ammunition vendor.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Section 30370, Penal Code](#). Reference: Sections [30370](#), [30385](#), [30390](#) and [30395, Penal Code](#).

History

HISTORY:

1. New section filed 6-24-2019; operative 6-24-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 26).

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11 CCR 4350

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 13. AUTOMATED FIREARMS SYSTEM INFORMATION UPDATES > ARTICLE 1. GENERAL

§ 4350. Title and Scope

This chapter shall be known as the "Department of Justice Regulations for Automated Firearms System Information Updates," may be cited as such and is referred to herein as "these regulations." The provisions of these regulations shall apply to an individual who seeks to electronically correct or update an Automated Firearms System (AFS) record with the Department of Justice (Department). The AFS is a repository of firearm records maintained by the Department, as established by [Penal Code section 11106](#). The AFS is populated by way of firearm purchases or transfers at a California licensed firearm dealer, registration of assault weapons, an individual's report of firearm ownership to the Department, Carry Concealed Weapons Permit records, or records entered by law enforcement agencies.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 11106 and 30370, Penal Code](#). Reference: [Sections 11106 and 30370, Penal Code](#).

History

HISTORY:

1. New chapter 13, article 1 (sections 4350-4353) and section filed 6-13-2019; operative 7-1-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 24).

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11 CCR 4351

This document is current through Register 2020, No. 28, July 10, 2020

CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 13. AUTOMATED FIREARMS SYSTEM INFORMATION UPDATES > ARTICLE 1. GENERAL

§ 4351. Purpose

An individual shall be able to electronically update one or more AFS records through the California Firearms Application Reporting System (CFARS) to match his or her current name, date of birth, address, and California Driver License, California Identification Card, or military identification number.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 11106 and 30370, Penal Code](#). Reference: [Sections 11106 and 30370, Penal Code](#).

History

HISTORY:

1. New section filed 6-13-2019; operative 7-1-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 24).

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11 CCR 4352

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 13. AUTOMATED FIREARMS SYSTEM INFORMATION UPDATES > ARTICLE 1. GENERAL

§ 4352. Privacy Notice Requirements

(a) An individual shall agree to the following terms of the Department's Privacy Notice before they may electronically correct or update one or more AFS records.

(1) **Collection and Use of Personal Information:** The Division of Law Enforcement, Bureau of Firearms in the Department of Justice collects the information on this application pursuant to [Penal Code section 11106](#). The Bureau of Firearms uses this information to correct or update personal information in the AFS. In addition, any personal information collected by state agencies is subject to the limitations in the Information Practices Act and state policy. The Department of Justice's general privacy policy is available at <http://oag.ca.gov/privacy-policy>.

(2) **Providing Personal Information:** All personal information fields marked with an asterisk must be completed. Failure to provide the mandatory personal information will result in the application not being processed.

(3) **Access to Your Information:** You may review the records maintained in the AFS by the Division of Law Enforcement, Bureau of Firearms in the Department of Justice that contain your personal information, as permitted by the Information Practices Act. See below for contact information.

(4) **Possible Disclosure of Personal Information:** The Bureau of Firearms may share the information you provide with any Bureau representative or any other person designated by the Attorney General upon request. The information you provide may also be disclosed in the following circumstances:

(A) With other persons or agencies when necessary to perform their legal duties, and their use of your information is compatible and complies with state law, such as for investigation, licensing, certification, or regulatory purposes.

(B) To another government agency as required by state or federal law.

11 CCR 4352

(5)Contact Information: For questions about this notice or access to your records, you may contact the Staff Services Analyst in the Customer Support Center at (916) 210-2300, via email at

firearms.bureau@doj.ca.gov

, or by mail at P.O. Box 820200 Sacramento, CA 94203-0200.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 11106 and 30370, Penal Code](#). Reference: [Section 30370, Penal Code](#).

History

HISTORY:

1. New section filed 6-13-2019; operative 7-1-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 24).
2. Change without regulatory effect amending subsection (a)(5) filed 12-17-2019 pursuant to *section 100, title 1, California Code of Regulations* (Register 2019, No. 51).
3. Editorial correction implementing 12-17-2019 nonsubstantive amendments (Register 2020, No. 13).

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CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 13. AUTOMATED FIREARMS SYSTEM INFORMATION UPDATES > ARTICLE 1. GENERAL

§ 4353. Updating AFS Records

- (a) Before an individual can electronically correct or update one or more AFS records, the individual shall create a CFARS account as prescribed by *California Code of Regulations, Title 11, section 4340*.
- (b) The individual shall provide the following current information: Full name, residence address, zip code, date of birth, and identification type and number.
- (c) The individual shall provide his or her personal information, as it was, at the time when a firearm was purchased or transferred into his or her ownership, as reported to the Department: Full name, residence address, zip code, date of birth, and identification type and number.
- (d) The individual shall provide information for one or more firearms that were purchased or transferred into his or her ownership and possession with the same owner information at the time of purchase or transfer. The individual shall provide the following information for each firearm: Make, model, caliber, serial number information, and/or type.
- (e) The individual may add another firearm purchased or transferred at another time by providing additional firearm identifying information as prescribed by subdivision (d).
- (f) Updates or corrections to name, date of birth, identification type and/or identification number require the individual to electronically upload documents verifying the change as prompted by CFARS. The individual will be prompted to upload a copy of his or her current California Driver License, California Identification Card, or military identification card (with military station orders) along with the following documentation to verify an AFS record update:
- (1) A change of name requires a copy of his or her marriage license, endorsed court order regarding restoration of former name, or endorsed court order regarding name change.
 - (2) A change to the date of birth requires a copy of his or her birth certificate.

(3) An update to identification type, and/or identification number requires a copy of his or her California Driver License, California Identification Card, or out-of-state driver license.

(g) The individual shall then agree to the following personal declaration: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(h) Once the individual has provided the necessary information and/or supporting documentation for the AFS record update or correction, the individual will then submit the information.

(i) The Department shall either approve or reject the individual's request to update or correct one or more AFS records and notify the individual of the approval or rejection via electronic mail. If the request is rejected, the electronic mail notification shall provide information on how to proceed.

Statutory Authority

AUTHORITY:

Note: Authority cited: [Sections 11106 and 30370, Penal Code](#). Reference: [Section 30370, Penal Code](#).

History

HISTORY:

1. New section filed 6-13-2019; operative 7-1-2019 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2019, No. 24).

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Cal Pen Code § 16151

Deering's California Codes are current through Chapters 1-10, 16, 19, and 22 of the 2020 Regular Session, including all legislation effective June 28, 2020 or earlier.

Deering's California Codes Annotated > *PENAL CODE (§§ 1 — 34370)* > *Part 6 Control of Deadly Weapons (Titles 1 — 4)* > *Title 1 Preliminary Provisions (Divs. 1 — 2)* > *Division 2 Definitions (§§ 16100 — 17360)*

§ 16151. “Ammunition vendor”

(a) As used in this part, commencing January 1, 2018, "ammunition vendor" means any person, firm, corporation, or other business enterprise that holds a current ammunition vendor license issued pursuant to [Section 30385](#).

(b) Commencing January 1, 2018, a firearms dealer licensed pursuant to [Sections 26700 to 26915](#), inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Articles 2 (commencing with [Section 30300](#)) and 3 (commencing with [Section 30342](#)) of Chapter 1 of Division 10 of Title 4.

History

Adopted by voters, Prop. 63 § 8.2, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

Deering's California Codes Annotated
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Cal Pen Code § 16151

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[Cal Pen Code § 30300](#)

Deering's California Codes are current through Chapters 1-10, 16, 19, and 22 of the 2020 Regular Session, including all legislation effective June 28, 2020 or earlier.

Deering's California Codes Annotated > PENAL CODE (§§ 1 — 34370) > Part 6 Control of Deadly Weapons (Titles 1 — 4) > Title 4 Firearms (Divs. 1 — 12) > Division 10 Special Rules Relating to Particular Types of Firearms or Firearm Equipment (Chs. 1 — 10) > Chapter 1 Ammunition (Arts. 1 — 5) > Article 2 Other Restrictions Relating to Ammunition (§§ 30300 — 30340)

§ 30300. Prohibited actions related to ammunition; Punishment

(a) Any person, corporation, or dealer who does any of the following shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both the imprisonment and fine:

- (1) Sells any ammunition or reloaded ammunition to a person under 18 years of age.
- (2) Sells any ammunition or reloaded ammunition designed and intended for use in a handgun to a person under 21 years of age. Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, it may be sold to a person who is at least 18 years of age, but less than 21 years of age, if the vendor reasonably believes that the ammunition is being acquired for use in a rifle and not a handgun.
- (3) Supplies, delivers, or gives possession of any ammunition to any minor who the person, corporation, or dealer knows, or using reasonable care should know, is prohibited from possessing that ammunition at that time pursuant to Chapter 1 (commencing with [Section 29610](#)) of Division 9 of Title 4 of Part 6.

(b) Proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reasonable reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this section.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Note—

[*Stats 2010 ch 711*](#) provides:

SEC. 10. [*Sections 7*](#) and [*9*](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

[*Stats 2009 ch 628*](#) provides:

SECTION 1. This act shall be known, and may be cited, as the Anti-Gang Neighborhood Protection Act of 2009.

Commentary

Law Revision Commission Comments:

2010—

Subdivision (a) of Section 30300 continues former Section 12316(a)(1)(A), the first and third sentences of former Section 12316(a)(1)(B), and former Section 12316(a)(1)(C) without substantive change.

Subdivision (b) continues the first sentence of former Section 12316(a)(2) without substantive change.

For limitations on the effect of this article, see Sections 30330 (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), 30335 (effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition manufactured under contract approved by government agency).

For further guidance on firearm restrictions relating to minors and persons under age 21, see Sections 27505 (person, corporation, or firm that sells, loans, or transfers firearm to minor or handgun to person under age 21), 27510 (dealer that supplies,

delivers, or gives possession or control of firearm to minor or handgun to person under age 21), 27945 (exception for certain situations involving minor), and 29610-29750 (juvenile).

See Sections 16150 (“ammunition”), 16300 (“bona fide evidence of identity” or “bona fide evidence of majority and identity”), 16640 (“handgun”), 16650 (“handgun ammunition”), 17090 (“rifle”).

Notes to Decisions

Decisions under Former Pen C § 12316

1. Generally

2. Evidence

3. Sentencing

Decisions under Former Pen C § 12316

1. Generally

Possessing ammunition, as misconduct “amounting to a crime,” could nevertheless be adjudicated as a juvenile probation violation under [Welf. & Inst. Code § 777](#) (as amended by the Gang Violence and Juvenile Crime Prevention Act of 1998 (Proposition 21)); therefore, the appeals court erred when it voided the juvenile court’s related finding of a gang-related crime for which a registration condition was appropriate under Pen C § [186.30](#). *In re Emiliano M.* (Cal. Aug. 7, 2003), [31 Cal. 4th 510, 3 Cal. Rptr. 3d 140, 73 P.3d 1132, 2003 Cal. LEXIS 5684](#).

2. Evidence

Evidence was sufficient to convict defendant, a convicted felon, of possessing ammunition in violation of Pen C § [12316\(b\)\(1\)](#) [Repealed], where an officer discovered in defendant’s home two .22 caliber bullets and a .45 caliber bullet. Whether or not these items qualified as live ammunition, they were ammunition within the meaning of § 12316(b) [Repealed]. *People v. Brown* (Cal. App. 4th Dist. Mar. 21, 2007), [148 Cal. App.](#)

[4th 911, 56 Cal. Rptr. 3d 255, 2007 Cal. App. LEXIS 400](#), review granted, depublished, ([Cal. June 13, 2007](#)), [61 Cal. Rptr. 3d 2, 160 P.3d 662, 2007 Cal. LEXIS 5921](#).

Although trial court erred in admitting evidence about dozens of contacts that defendant and fellow gang members had with law enforcement because evidence of prior arrests that did not result in convictions was inadmissible either as proof of guilt or for impeachment, any error was harmless where the jury did not accept the gang evidence and prior crimes evidence uncritically, and where the admissible evidence overwhelmingly established defendant's guilt of possession of a firearm by a felon, possession of methamphetamine, possession of a controlled substance while armed, possession of ammunition by a felon, and participation in a criminal street gang, as well as the truth of the gang enhancement allegations; moreover, contraband was found in close proximity to personal possessions that were in turn tied to defendant and ample admissible evidence established defendant's prior and current involvement with the gang and drug sales. [People v. Williams \(2009, 4th Dist\) 170 Cal App 4th 587, 88 Cal Rptr 3d 401, 2009 Cal App LEXIS 78](#), review denied [People v. Williams \(Kenneth Demario\) \(2009, Cal.\) 2009 Cal. LEXIS 4904](#).

In a case in which defendant was convicted of possession of a firearm by a felon under Pen C § [12021\(a\)\(1\)](#) [Repealed], and possession of ammunition by a felon under Pen C § [12316\(b\)\(1\)](#) [Repealed], after the trial court admitted the audiotape of the victim's 911 call when the victim failed to appear at trial, the statements in the audiotape call were nontestimonial and did not violate Crawford v. Washington because any reasonable listener would recognize that the victim was facing an ongoing emergency. The victim stated in the call that defendant had shot at her, and her call was plainly a call for help against a bona fide physical threat. [People v. Johnson \(2010, 1st Dist\) 189 Cal App 4th 1216, 117 Cal Rptr 3d 132, 2010 Cal App LEXIS 1897](#), review denied [People v. Johnson \(Tony Alfonso\) \(2011, Cal.\) 2011 Cal. LEXIS 1459](#).

3. Sentencing

Where defendant's prior convictions, prior prison term, probation status, and poor performance on probation were recidivist factors that justified imposition of the upper term for a gang enhancement allegation on his conviction for possession of ammunition by a felon, defendant's [U.S. Const. Amend. VI](#) right to a jury trial was not violated; because a single factor in aggravation could support an upper term sentence, trial court's reliance on additional factors not found by the jury did not require remand for resentencing. [People v. Williams \(2009, 4th Dist\) 170 Cal App 4th 587, 88 Cal Rptr 3d 401, 2009 Cal App LEXIS 78](#), review denied [People v. Williams \(Kenneth Demario\) \(2009, Cal.\) 2009 Cal. LEXIS 4904](#).

In a case in which defendant was convicted of two counts of attempted murder with related firearm-use and criminal street gang enhancements, one count of shooting at an occupied motor vehicle, and multiple counts of unlawful firearm and ammunition possession, the trial court improperly sentenced defendant on the unlawful gun possession and ammunition counts where there was no evidence in the record that would support the trial court's implied factual finding that defendant had different or multiple objectives in possessing the loaded firearm and possessing the ammunition in the gun itself. Having sentenced defendant for his two convictions for unlawful possession of a firearm, the trial court erred in failing to stay the sentences for the unlawful possession of ammunition counts pursuant to Pen C § [654](#) because the ammunition at issue in those two counts was either loaded into defendant's handgun or had been fired from that gun. [People v. Sok \(2010, 2d Dist\) 181 Cal App 4th 88, 104 Cal Rptr 3d 310, 2010 Cal App LEXIS 54, rehearing denied People v. Sok \(John\) \(2010, Cal. App. 2d Dist.\) 2010 Cal. App. LEXIS 203.](#)

Conduct proscribed by Pen C §§ [12021](#) and [12316](#) [Repealed], is coextensive with that prohibited by a probation condition specifically implementing those statutes. [People v. Kim \(Cal. App. 6th Dist. Mar. 22, 2011\), 193 Cal. App. 4th 836, 122 Cal. Rptr. 3d 599, 2011 Cal. App. LEXIS 314.](#)

In a case in which defendant pleaded no contest to felony battery causing serious bodily injury, conditions of probation prohibiting defendant from possessing firearms or ammunition contained an implicit knowledge requirement. The conditions did not need to be modified to add an explicit knowledge requirement. [People v. Kim \(Cal. App. 6th Dist. Mar. 22, 2011\), 193 Cal. App. 4th 836, 122 Cal. Rptr. 3d 599, 2011 Cal. App. LEXIS 314.](#)

Research References & Practice Aids

Law Review Articles:

Review of Selected 2005 California Legislation: Penal: Chapter 681: Keeping Ammunition Out of the Hands of Minors. [37 McGeorge LR 336.](#)

Jury Instructions

Cal Pen Code § 30300

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), [*CALCRIM No. 2591*](#), Possession of Ammunition by Person Prohibited From Possessing Firearm Due to Conviction by Mental Illness.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), [*CALCRIM No. 2592*](#), Possession of Ammunition by Person Prohibited From Possessing Firearm Due to Court Order.

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[Cal Pen Code § 30305](#)

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§ 30305. Persons prohibited from owning or possessing firearm prohibited from owning, possessing, or controlling ammunition

(a)

(1) No person prohibited from owning or possessing a firearm under Chapter 2 (commencing with [Section 29800](#)) or Chapter 3 (commencing with [Section 29900](#)) of Division 9 of this title, or [Section 8100 or 8103 of the Welfare and Institutions Code](#), shall own, possess, or have under custody or control, any ammunition or reloaded ammunition.

(2) A violation of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

(b)

(1) A person who is not prohibited by subdivision (a) from owning, possessing, or having under the person's custody or control, any ammunition or reloaded ammunition, but who is enjoined from engaging in activity pursuant to an injunction issued pursuant to [Section 3479 of the Civil Code](#) against that person as a member of a criminal street gang, as defined in [Section 186.22](#), may not own, possess, or have under the person's custody or control, any ammunition or reloaded ammunition.

(2) A violation of this subdivision is a misdemeanor.

(c) A violation of subdivision (a) or (b) is justifiable where all of the following conditions are met:

(1) The person found the ammunition or reloaded ammunition or took the ammunition or reloaded ammunition from a person who was committing a crime against the person who found or took the ammunition or reloaded ammunition.

(2)The person possessed the ammunition or reloaded ammunition no longer than was necessary to deliver or transport the ammunition or reloaded ammunition to a law enforcement agency for that agency’s disposition according to law.

(3)The person is prohibited from possessing any ammunition or reloaded ammunition solely because that person is prohibited from owning or possessing a firearm only by virtue of Chapter 2 (commencing with [Section 29800](#)) of Division 9 or ammunition or reloaded ammunition because of subdivision (b).

(d)Upon the trial for violating subdivision (a) or (b), the trier of fact shall determine whether the defendant is subject to the exemption created by subdivision (c). The defendant has the burden of proving by a preponderance of the evidence that the defendant is subject to the exemption provided by subdivision (c).

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Editor’s Notes—

Note—

Editor’s Notes—

For annotations to former Pen C § 12316, see [Pen C § 30300](#).

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Subdivision (a) of [Section 30305](#) continues former [Section 12316\(b\)\(1\)](#) & (3) without substantive change.

Subdivision (b) continues former [Section 12316\(b\)\(4\)](#)-(5) without substantive change.

Subdivision (c) continues former [Section 12316\(d\)\(1\)](#) without substantive change.

Subdivision (d) continues former [Section 12316\(d\)\(2\)](#)-(3) without substantive change.

For limitations on the effect of this article, see [Sections 30330](#) (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), [30335](#) (effect of article on permanently deactivated ammunition), [30340](#) (effect of article on ammunition manufactured under contract approved by government agency).

See [Sections 16150](#) (“ammunition”), [16520](#) (“firearm”).

Notes to Decisions

Decisions Under Current Law

1. Generally

2. Sentencing

3. Evidence

Decisions Under Former Law

1. Generally

Decisions Under Current Law

1. Generally

Because a search of defendant's home was conducted for a legitimate law enforcement purpose, i.e., the belief he had some connection with a recent crime, and because defendant, by accepting probation and the concomitant search condition, waived his Fourth Amendment rights, the search, though warrantless and without specific knowledge of defendant's search condition, was not constitutionally unreasonable, and defendant's motion to suppress was properly denied in his possession of ammunition by a felon trial; at most, the deputy who conducted the search had made a legal error, as he did not confirm with dispatch that defendant's probation contained a search term and therefore mistakenly believed he was justified in searching defendant's home. [*People v. Wolfgang* \(Cal. App. 4th Dist. Oct. 5, 2015\), 240 Cal. App. 4th 1268, 193 Cal. Rptr. 3d 256, 2015 Cal. App. LEXIS 877](#), review denied, ordered not published, [*\(Cal. Jan. 20, 2016\), 2016 Cal. LEXIS 484*](#).

2. Sentencing

In determining whether defendant posed an unreasonable risk to public safety for purposes of the Three Strikes Reform Act of 2012, the trial court properly used a broader definition of "unreasonable risk of danger to public safety" than used under Proposition 47, the Safe Neighborhoods and Schools Act; the trial court did not have to find that defendant posed a risk of committing a "super strike." [*People v. Myers* \(Cal. App. 3d Dist. Mar. 17, 2016\), 245 Cal. App. 4th 794, 200 Cal. Rptr. 3d 19, 2016 Cal. App. LEXIS 202](#), review granted, depublished, [*\(Cal. May 25, 2016\), 202 Cal. Rptr. 3d 496, 370 P.3d 1052, 2016 Cal. LEXIS 3620*](#).

Sentences for illegal possession of ammunition were stayed because defendants were already punished for possession of a firearm by a felon and the evidence showed the ammunition was loaded inside the firearms. [*People v. McEntire* \(Cal. App. 5th Dist. Apr. 20, 2016\), 247 Cal. App. 4th 484, 202 Cal. Rptr. 3d 128, 2016 Cal. App. LEXIS 393](#).

Trial court erred in imposing a probation term requiring defendant to pay a drug testing fee under a county ordinance and [*Pen. Code, § 1203.1ab*](#), because the statute did not apply to his conviction for unlawful possession of ammunition, given that the plain meaning of the statute authorizes imposition of a drug testing fee only when the probationer has been convicted of a drug-related offense; although the scope of defendant's overall case and probation involved both unlawful possession of controlled substances and unlawful

possession of ammunition, his sole conviction was for possession of ammunition, and that offense did not have any substantial nexus to the controlled substances. *People v. Brooks* (Cal. App. 4th Dist. , 14 Cal. App. 5th 933, 2017 Cal. App. LEXIS 739), reprinted, sub. op., (Cal. App. 4th Dist. Aug. 25, 2017), 223 Cal. Rptr. 3d 88, 15 Cal. App. 5th 331, 2017 Cal. App. LEXIS 818.

3 Evidence

Defendant's 30-50 minute detention, which lasted from the inception of a probation search of a third party until deputies learned from dispatch that defendant was himself on Post-Release Community Supervision, was unreasonable. It was necessary to suppress evidence of drugs and ammunition subsequently obtained from defendant's person and car, as well as any statements he made in connection with those searches *People v. Gutierrez* (Cal. App. 5th Dist. Mar. 29, 2018), 230 Cal. Rptr. 3d 915, 21 Cal. App. 5th 1146, 2018 Cal. App. LEXIS 282.

In a trial for possession of ammunition, evidence of defendant's prior possession of ammunition was relevant to cast doubt on his defense that the police may have planted the ammunition in the current case, and it was not especially inflammatory when compared to the charged drug and firearm possession crimes. *People v. Turner* (Cal. App. 1st Dist. July 10, 2017), 220 Cal. Rptr. 3d 449, 13 Cal. App. 5th 397, 2017 Cal. App. LEXIS 611, modified, (Cal. App. 1st Dist. July 27, 2017), 2017 Cal. App. LEXIS 653.

Evidence was sufficient to find that defendant was in constructive possession of a firearm and ammunition in a backpack found directly behind the center console in a car that defendant occupied along with two other people because an inference that the backpack belonged him was supported by his knowledge that there was marijuana inside the backpack's front pocket. *People v. Bay* (Cal. App. 1st Dist. July 10, 2019), 249 Cal. Rptr. 3d 506, 37 Cal. App. 5th 380, 2019 Cal. App. LEXIS 630, vacated, (Cal. App. 1st Dist. Aug. 7, 2019), 2019 Cal. App. LEXIS 793.

Sufficient evidence supported a finding that a firearm and ammunition were in defendant's constructive possession because he knew that there was marijuana in the front pocket of the backpack containing the contraband. *People v. Bay* (Cal. App. 1st Dist. Sept. 20, 2019), 253 Cal. Rptr. 3d 26, 40 Cal. App. 5th 126, 2019 Cal. App. LEXIS 903.

Decisions Under Former Law

1. Generally

In a trial under former Pen C § 12316 for unlawful possession of ammunition, due process required a unanimity instruction because the prosecution presented evidence and argument as to two incidents and defendant presented a separate defense as to each: Defendant allegedly fired a firearm at the victim's home, and later that evening a loaded firearm was found in a search of a vehicle allegedly driven by defendant, concealed under the hood. [*People v. Hernandez* \(Cal. App. 4th Dist. June 25, 2013\), 217 Cal. App. 4th 559, 159 Cal. Rptr. 3d 35, 2013 Cal. App. LEXIS 502.](#)

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[Cal Pen Code § 30306](#)

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§ 30306. Providing ammunition to person prohibited from having; Provision to person subsequently selling or transferring to prohibited person; Acts cumulative

(a) Any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who he or she knows or using reasonable care should know is prohibited from owning, possessing, or having under custody or control, any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of [Section 30305](#), is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) Any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person whom the person, corporation, firm, or other business enterprise knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a person who is prohibited from owning, possessing, or having under custody or control any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of [Section 30305](#), is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(c) 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 this section and another provision of law shall not be punished under more than one provision.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012. Amendment approved by voters, Prop. 63 § 8.5, effective November 9, 2016.

Annotations

Notes

Amendments:

Note—

Amendments:

2016 Amendment:

(1) Substituted “firm, or other business enterprise” for “or firm” in subd (a); (2) added subd (b); and (3) redesignated former subd (b) to be subd (c).

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30306 continues former Section 12317(a)-(b) without substantive change.
See Section 16150 (“ammunition”).

Cal Pen Code § 30306

End of Document

[Cal Pen Code § 30310](#)

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§ 30310. Ammunition on school grounds

(a) Unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties .

(b) This section shall not apply to any of the following:

- (1) A duly appointed peace officer as defined in Chapter 4.5 (commencing with [Section 830](#)) of Title 3 of Part 2.
- (2) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.
- (3) Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer.
- (4) A member of the military forces of this state or of the United States who is engaged in the performance of that person's duties.
- (5) An armored vehicle guard, who is engaged in the performance of that person's duties, as defined in subdivision (d) of [Section 7582.1 of the Business and Professions Code](#).
- (6) Any peace officer, listed in [Section 830.1](#) or [830.2](#), or subdivision (a) of [Section 830.33](#), whether active or honorably retired.
- (7) Any other duly appointed peace officer.
- (8) Any honorably retired peace officer listed in subdivision (c) of [Section 830.5](#).
- (9) Any other honorably retired peace officer who during the course and scope of his or her appointment as a peace officer was authorized to, and did, carry a firearm.
- (10)

(A) A person carrying ammunition or reloaded ammunition onto school grounds that is in a motor vehicle at all times and is within a locked container or within the locked trunk of the vehicle.

(B) For purposes of this paragraph, the term “locked container” has the same meaning as set forth in [Section 16850](#).

(c) A violation of this section is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars (\$1,000), or both the imprisonment and fine.

History

Added [Stats 2010 ch 711 § 6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012. Amended [Stats 2015 ch 766 § 2 \(SB 707\)](#), effective January 1, 2016.

Annotations

Notes

Amendments:

Note—

Amendments:

2015 Amendment:

(1) Deleted “or persons exempted under Section 25450” at the end of subd (a); (2) deleted former subd (b)(5) which read: “A person holding a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5.”; (3) redesignated former subd (b)(6) to be subd (b)(5); and (4) added subds (b)(6)-(b)(10).

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30310 continues former Section 12316(c) without substantive change. An erroneous cross-reference to Business and Professions Code Section 7521(e) has been corrected by replacing it with a cross-reference to Business and Professions Code Section 7582.1(d).

For limitations on the effect of this article, see Sections 30330 (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), 30335 (effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition manufactured under contract approved by government agency).

For other provisions relating to weapons on school grounds, see Sections 626.9 (Gun-Free School Zone Act) and 626.10 (miscellaneous weapons on school grounds).

See Section 16520 (“firearm”).

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§ 30315. Possession of handgun ammunition designed to penetrate metal or armor

Any person, firm, or corporation who, within this state knowingly possesses any handgun ammunition designed primarily to penetrate metal or armor is guilty of a public offense and upon conviction thereof shall be punished by imprisonment pursuant to subdivision (h) of *Section 1170*, or in the county jail for a term not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both that fine and imprisonment.

History

Added [Stats 2010 ch 711 § 6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012. Amended [Stats 2011 ch 15 § 548 \(AB 109\)](#), effective April 4, 2011, operative January 1, 2012.

Annotations

Notes

Editor's Notes—

Amendments:

Note—

Editor's Notes—

The Community Corrections Grant Program referred to in [Stats 2011 ch 15 § 636](#), as amended by [Stats 2011 ch 39 § 68](#), was created by [Stats 2011 ch 40 § 3](#), operative October 1, 2011.

Amendments:

2011 Amendment:

Substituted “pursuant to subdivision (h) of Section 1170” for “in the state prison”.

Note—

[Stats 2011 ch 15 § 636](#), as amended by [Stats 2011 ch 39 § 68](#), provides:

SEC. 636. This act will become operative no earlier than October 1, 2011, and only upon creation of a community corrections grant program to assist in implementing this act and upon an appropriation to fund the grant program.

[Stats 2011 ch 15](#) provides:

[SECTION 1](#). This act is titled and may be cited as the 2011 Realignment Legislation addressing public safety.

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30315 continues former Section 12320 without substantive change.

For an exception to this provision, see Section 30325 (transporting handgun ammunition designed primarily to penetrate metal or armor to law enforcement agency).

For other limitations on the effect of this article, see Sections 30330 (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), 30335 (effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition manufactured under contract approved by government agency).

See Section 16660 (“handgun ammunition designed primarily to penetrate metal or armor”).

Research References & Practice Aids

Jurisprudences

Cal Jur 3d (Rev) Criminal Law § 1606.

Law Review Articles:

Review of Selected 2005 California Legislation: Penal: Chapter 681: Keeping Ammunition Out of the Hands of Minors. [37 McGeorge LR 336](#).

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[Cal Pen Code § 30320](#)

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§ 30320. Manufacture, importation, sale or knowing transport of handgun ammunition designed to penetrate metal or armor

Any person, firm, or corporation who, within this state, manufactures, imports, sells, offers to sell, or knowingly transports any handgun ammunition designed primarily to penetrate metal or armor is guilty of a felony and upon conviction thereof shall be punished by imprisonment in state prison, or by a fine not to exceed five thousand dollars (\$5,000), or by both that fine and imprisonment.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Prior Law:

Note—

Prior Law:

There was another section of this number, identical to the present section, which was added Stats 1982 ch 949 § 3, effective September 13, 1982, and repealed [Stats 1990 ch 216 § 91](#).

Note—

[*Stats 2010 ch 711*](#) provides:

SEC. 10. Sections 7 and 9 of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30320 continues former Section 12321 without substantive change.

For an exception to this provision, see Section 30325 (transporting handgun ammunition designed primarily to penetrate metal or armor to law enforcement agency).

For other limitations on the effect of this article, see Sections 30330 (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), 30335 (effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition manufactured under contract approved by government agency).

See Section 16660 (“handgun ammunition designed primarily to penetrate metal or armor”).

Research References & Practice Aids

Jurisprudences

Cal Jur 3d (Rev) Criminal Law § 1606.

Cal Pen Code § 30320

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[Cal Pen Code § 30325](#)

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§ 30325. Transport of handgun ammunition designed to penetrate metal or armor for disposition according to law

Nothing in this article shall apply to or affect the possession of handgun ammunition designed primarily to penetrate metal or armor by a person who found the ammunition, if that person is not prohibited from possessing firearms or ammunition pursuant to subdivision (a) of [Section 30305](#), Chapter 2 (commencing with [Section 29800](#)) or Chapter 3 (commencing with [Section 29900](#)) of Division 9 of this title, or [Section 8100 or 8103 of the Welfare and Institutions Code](#), and the person is transporting the ammunition to a law enforcement agency for disposition according to law.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Prior Law:

Note—

Prior Law:

There was another section of this number, identical to the present section, which was added Stats 1982 ch 949 § 3, effective September 13, 1982, and repealed [Stats 1990 ch 216 § 91](#).

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. Sections 7 and 9 of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30325 continues former Section 12322(b) without substantive change.

See Section 16660 (“handgun ammunition designed primarily to penetrate metal or armor”).

Research References & Practice Aids

Jurisprudences

Cal Jur 3d (Rev) Criminal Law § 1606.

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[Cal Pen Code § 30330](#)

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§ 30330. Exception for armed forces; police agency, forensic laboratory, or valid permit holder

Nothing in this article shall apply to or affect the sale to, purchase by, possession of, or use of any ammunition by any member of the Army, Navy, Air Force, or Marine Corps of the United States, or the National Guard, while on duty and acting within the scope and course of employment, or any police agency or forensic laboratory or any person who is the holder of a valid permit issued pursuant to Article 3 (commencing with [Section 18900](#)) of Chapter 1 of Division 5 of Title 2.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Prior Law:

Note—

Prior Law:

There was another section of this number, identical to the present section, which was added Stats 1982 ch 949 § 3, effective September 13, 1982, and repealed [Stats 1990 ch 216 § 91](#).

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. Sections 7 and 9 of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30330 continues former Section 12322(a) without substantive change.

Research References & Practice Aids

Jurisprudences

Cal Jur 3d (Rev) Criminal Law § 1606.

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[Cal Pen Code § 30335](#)

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§ 30335. Transportation of ammunition when propellant removed and primer permanently deactivated

Nothing in this article shall prohibit the possession, importation, sale, attempted sale, or transport of ammunition from which the propellant has been removed and the primer has been permanently deactivated.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Prior Law:

Note—

Prior Law:

There was another section of this number, identical to the present section, which was added Stats 1982 ch 949 § 3, effective September 13, 1982, and repealed [Stats 1990 ch 216 § 91](#).

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. Sections 7 and 9 of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30335 continues former Section 12324 without substantive change.

Research References & Practice Aids

Jurisprudences

Cal Jur 3d (Rev) Criminal Law § 1606.

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§ 30340. Manufacture of ammunition under contracts approved by state or federal government

Nothing in this article shall prohibit the manufacture of ammunition under contracts approved by agencies of the state or federal government.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30340 continues former Section 12325 without substantive change.

Research References & Practice Aids

Jurisprudences

Cal Jur 3d (Rev) Criminal Law § 1606.

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[Cal Pen Code § 30342](#)

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§ 30342. Sale of more than 500 rounds of ammunition in 30-day period; Ammunition vendor license requirement

(a) Commencing January 1, 2018, a valid ammunition vendor license shall be required for any person, firm, corporation, or other business enterprise to sell more than 500 rounds of ammunition in any 30-day period.

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

History

Adopted by voters, Prop. 63 § 8.9, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

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§ 30345. Compliance by vendor

A vendor shall comply with all of the conditions, requirements, and prohibitions stated in this article.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30345 continues the introductory clause of former Section 12061(a) without substantive change.

See Section 17315 (“vendor”).

Notes to Decisions

1. Constitutionality

This statute is unconstitutional and void for vagueness; vagueness permeates the text of the statute to the point where constitutional guarantees of due process are violated because it fails to provide adequate notice of the conduct proscribed and fails to provide adequate standards for compliance with the law, leaving a significant risk of arbitrary and discriminatory application by law enforcement officials. [*Parker v. State of California* \(Cal. App. 5th Dist. Nov. 6, 2013\), 221 Cal. App. 4th 340, 164 Cal. Rptr. 3d 345, 2013 Cal. App. LEXIS 902](#), review granted, depublished, (Cal. Feb. 19, 2014), 167 Cal. Rptr. 3d 658, 317 P.3d 1184, 2014 Cal. LEXIS 1270.

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[Cal Pen Code § 30347](#)

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§ 30347. Ammunition vendor's agents and employees; Certificate of eligibility from Department of Justice; Limitation on scope of employment for specified persons

(a) An ammunition vendor shall require any agent or employee who handles, sells, delivers, or has under his or her custody or control any ammunition, to obtain and provide to the vendor a certificate of eligibility from the Department of Justice issued pursuant to [Section 26710](#). On the application for the certificate, the agent or employee shall provide the name and address of the ammunition vendor with whom the person is employed, or the name and California firearms dealer number of the ammunition vendor if applicable.

(b) The department shall notify the ammunition vendor in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing ammunition under subdivision (a) of [Section 30305](#) or federal law.

(c) An ammunition vendor shall not permit any agent or employee who the vendor knows or reasonably should know is a person described in Chapter 2 (commencing with [Section 29800](#)) or Chapter 3 (commencing with [Section 29900](#)) of Division 9 of this title or [Section 8100 or 8103 of the Welfare and Institutions Code](#) to handle, sell, deliver, or have under his or her custody or control, any ammunition in the course and scope of employment.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012. Amendment approved by voters, Prop. 63 § 8.10, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

Amendments:

Note—

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

Amendments:

2016 Amendment:

(1) Added subds (a) and (b); (2) added subdivision designation (c); and (3) amended subd (c) by substituting (a) “An ammunition vendor” for “A vendor”; and (b) “deliver, or have under his or her custody or control, any ammunition” for “or deliver handgun ammunition”.

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30347 continues former Section 12061(a)(1) without substantive change.

See Sections 16650 (“handgun ammunition”), 17315 (“vendor”).

Notes to Decisions

1. Constitutionality

This statute is unconstitutional and void for vagueness; vagueness permeates the text of the statute to the point where constitutional guarantees of due process are violated because it fails to provide adequate notice of the conduct proscribed and fails to provide adequate standards for compliance with the law, leaving a significant risk of arbitrary and discriminatory application by law enforcement officials. [*Parker v. State of California* \(Cal. App. 5th Dist. Nov. 6, 2013\), 221 Cal. App. 4th 340, 164 Cal. Rptr. 3d 345, 2013 Cal. App. LEXIS 902](#), review granted, unpublished, (Cal. Feb. 19, 2014), 167 Cal. Rptr. 3d 658, 317 P.3d 1184, 2014 Cal. LEXIS 1270.

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Cal Pen Code § 30348

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§ 30348. Sale of ammunition by licensed vendor; Licensed premises requirement; Gun shows and events

(a) Except as provided in subdivision (b), the sale of ammunition by a licensed vendor shall be conducted at the location specified in the license.

(b) A vendor may sell ammunition at a gun show or event if the gun show or event is not conducted from any motorized or towed vehicle.

(c) For purposes of this section, "gun show or event" means a function sponsored by any national, state, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

(d) Sales of ammunition at a gun show or event shall comply with all applicable laws including [Sections 30347](#), [30350](#), [30352](#), and [30360](#).

History

Adopted by voters, Prop. 63 § 8.11, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

Cal Pen Code § 30348

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

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§ 30350. Transfer of ammunition without assistance of vendor or employee

An ammunition vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012. Amendment approved by voters, Prop. 63 § 8.12, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

Amendments:

Note—

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

Amendments:

2016 Amendment:

(1) Substituted “An ammunition vendor” for “A vendor”; and (2) deleted “handgun” after “ownership of any”.

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30350 continues former Section 12061(a)(2) without substantive change.
See Sections 16650 (“handgun ammunition”), 17315 (“vendor”).

Notes to Decisions

1. Constitutionality

This statute is unconstitutional and void for vagueness; vagueness permeates the text of the statute to the point where constitutional guarantees of due process are violated because it fails to provide adequate notice of the conduct proscribed and fails to provide adequate standards for compliance with the law, leaving a significant risk of arbitrary and discriminatory application by law enforcement officials. [Parker v. State of California \(Cal.](#)

Cal Pen Code § 30350

App. 5th Dist. Nov. 6, 2013), 221 Cal. App. 4th 340, 164 Cal. Rptr. 3d 345, 2013 Cal. App. LEXIS 902, review granted, depublished, (*Cal. Feb. 19, 2014*), *167 Cal. Rptr. 3d 658, 317 P.3d 1184, 2014 Cal. LEXIS 1270*.

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§ 30355. Maintenance of records

Commencing February 1, 2011, the records required by this article shall be maintained on the premises of the vendor for a period of not less than five years from the date of the recorded transfer.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30355 continues former Section 12061(a)(4) without substantive change.

See Section 17315 (“vendor”).

Notes to Decisions

1. Constitutionality

This statute is unconstitutional and void for vagueness; vagueness permeates the text of the statute to the point where constitutional guarantees of due process are violated because it fails to provide adequate notice of the conduct proscribed and fails to provide adequate standards for compliance with the law, leaving a significant risk of arbitrary and discriminatory application by law enforcement officials. [*Parker v. State of California* \(Cal. App. 5th Dist. Nov. 6, 2013\), 221 Cal. App. 4th 340, 164 Cal. Rptr. 3d 345, 2013 Cal. App. LEXIS 902](#), review granted, depublished, (Cal. Feb. 19, 2014), 167 Cal. Rptr. 3d 658, 317 P.3d 1184, 2014 Cal. LEXIS 1270.

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§ 30357. Inspection of records

(a) Commencing February 1, 2011, the records referred to in [Section 30352](#) shall be subject to inspection at any time during normal business hours by any peace officer employed by a sheriff, city police department, or district attorney as provided in subdivision (a) of *Section 830.1*, or employed by the department as provided in subdivision (b) of *Section 830.1*, provided that the officer is conducting an investigation where access to those records is or may be relevant, is seeking information about persons prohibited from owning a firearm or ammunition, or is engaged in ensuring compliance with the Dangerous Weapons Control Law, as defined in [Section 23500](#), or any other laws pertaining to firearms or ammunition.

(b) The records referred to in [Section 30352](#) shall also be subject to inspection at any time during normal business hours by any other employee of the department, provided that the employee is conducting an investigation where access to those records is or may be relevant, is seeking information about persons prohibited from owning a firearm or ammunition, or is engaged in ensuring compliance with the Dangerous Weapons Control Law, as defined in [Section 23500](#), or any other laws pertaining to firearms or ammunition.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30357 continues former Section 12061(a)(5) without substantive change.
See Section 16520 (“firearm”).

Notes to Decisions

1. Constitutionality

This statute is unconstitutional and void for vagueness; vagueness permeates the text of the statute to the point where constitutional guarantees of due process are violated because it fails to provide adequate notice of the conduct proscribed and fails to provide adequate standards for compliance with the law, leaving a significant risk of arbitrary and discriminatory application by law enforcement officials. [Parker v. State of California \(Cal. App. 5th Dist. Nov. 6, 2013\)](#), [221 Cal. App. 4th 340](#), [164 Cal. Rptr. 3d 345](#), [2013 Cal. App. LEXIS 902](#), review granted, depublished, ([Cal. Feb. 19, 2014](#)), [167 Cal. Rptr. 3d 658](#), [317 P.3d 1184](#), [2014 Cal. LEXIS 1270](#).

Cal Pen Code § 30357

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§ 30360. False entries in records

Commencing February 1, 2011, a vendor shall not knowingly make a false entry in, fail to make a required entry in, fail to obtain the required thumbprint, or otherwise fail to maintain in the required manner, records prepared in accordance with [Section 30352](#). If the right thumbprint is not available, then the vendor shall have the purchaser or transferee use the left thumb, or any available finger, and shall so indicate on the form.

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30360 continues former Section 12061(a)(6) without substantive change.

An erroneous cross-reference to former Section 12316(a)(2) has been replaced with a reference to Section 30352, which continues former Section 12316(a)(3).

See Section 17315 (“vendor”).

Notes to Decisions

1. Constitutionality

This statute is unconstitutional and void for vagueness; vagueness permeates the text of the statute to the point where constitutional guarantees of due process are violated because it fails to provide adequate notice of the conduct proscribed and fails to provide adequate standards for compliance with the law, leaving a significant risk of arbitrary and discriminatory application by law enforcement officials. [*Parker v. State of California* \(Cal. App. 5th Dist. Nov. 6, 2013\), 221 Cal. App. 4th 340, 164 Cal. Rptr. 3d 345, 2013 Cal. App. LEXIS 902](#), review granted, depublished, (Cal. Feb. 19, 2014), 167 Cal. Rptr. 3d 658, 317 P.3d 1184, 2014 Cal. LEXIS 1270.

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Cal Pen Code § 30362

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§ 30362. Refusal to permit inspection

(a) Commencing February 1, 2011, no vendor shall, during any inspection conducted pursuant to this article, refuse to permit a person authorized under [Section 30357](#) to examine any record prepared in accordance with this article.

(b) Commencing February 1, 2011, no vendor shall refuse to permit the use of any record or information by a person authorized under [Section 30357](#).

History

Added Stats 2010 ch 711 § [6 \(SB 1080\)](#), effective January 1, 2011, operative January 1, 2012.

Annotations

Notes

Note—

[Stats 2010 ch 711](#) provides:

SEC. 10. [Sections 7](#) and [9](#) of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

Commentary

Law Revision Commission Comments:

2010—

Section 30362 continues former Section 12061(a)(7) without substantive change. See Section 17315 (“vendor”).

Notes to Decisions

1. Constitutionality

This statute is unconstitutional and void for vagueness; vagueness permeates the text of the statute to the point where constitutional guarantees of due process are violated because it fails to provide adequate notice of the conduct proscribed and fails to provide adequate standards for compliance with the law, leaving a significant risk of arbitrary and discriminatory application by law enforcement officials. [*Parker v. State of California* \(Cal. App. 5th Dist. Nov. 6, 2013\), 221 Cal. App. 4th 340, 164 Cal. Rptr. 3d 345, 2013 Cal. App. LEXIS 902](#), review granted, unpublished, (Cal. Feb. 19, 2014), 167 Cal. Rptr. 3d 658, 317 P.3d 1184, 2014 Cal. LEXIS 1270.

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§ 30363. Loss or theft of ammunition; Reporting requirements for licensed ammunition vendors

Within 48 hours of discovery, an ammunition vendor shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the vendor's business premises are located:

- (1) Any ammunition that is merchandise of the vendor.
- (2) Any ammunition that the vendor takes possession of pursuant to [Section 30312](#).
- (3) Any ammunition kept at the vendor's place of business.

History

Adopted by voters, Prop. 63 § 8.14, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

Cal Pen Code § 30363

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[Cal Pen Code § 30371](#)

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§ 30371. Application for ammunition purchase authorization

(a) There is hereby appropriated twenty-five million dollars (\$25,000,000) from the General Fund as a loan for the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program provided for in [Sections 30352](#) and [30370](#).

(b) For purposes of repaying the loan, the Controller shall, after disbursing moneys necessary to implement, operate and enforce the ammunition authorization program provided for in [Sections 30352](#) and [30370](#), transfer all proceeds from fees received by the Ammunition Safety and Enforcement Special Fund up to the amount of the loan provided by this section, including interest at the pooled money investment account rate, to the General Fund.

History

Adopted by voters, Prop. 63 § 8.15 effective November 9, 2016.

Annotations

Notes

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

Research References & Practice Aids

Hierarchy Notes:

[Cal Pen Code Pt. 6, Title 4, Div. 10, Ch. 1, Art. 4](#)

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[Cal Pen Code § 30385](#)

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§ 30385. Issuance of license by Department of Justice

(a) The Department of Justice is authorized to issue ammunition vendor licenses pursuant to this article. The department shall, commencing July 1, 2017, commence accepting applications for ammunition vendor licenses. If an application is denied, the department shall inform the applicant of the reason for denial in writing.

(b) The ammunition vendor license shall be issued in a form prescribed by the department and shall be valid for a period of one year. The department may adopt regulations to administer the application and enforcement provisions of this article. The license shall allow the licensee to sell ammunition at the location specified in the license or at a gun show or event as set forth in [Section 30348](#).

(c)

(1) In the case of an entity other than a natural person, the department shall issue the license to the entity, but shall require a responsible person to pass the background check pursuant to [Section 30395](#).

(2) For purposes of this article, “responsible person” means a person having the power to direct the management, policies, and practices of the entity as it pertains to ammunition.

(d) Commencing January 1, 2018, a firearms dealer licensed pursuant to [Sections 26700 to 26915](#), inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Article 2 (commencing with [Section 30300](#)) and Article 3 (commencing with [Section 30342](#)).

History

Adopted by voters, Prop. 63 § 8.16, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

Research References & Practice Aids

Hierarchy Notes:

[Cal Pen Code Pt. 6, Title 4, Div. 10, Ch. 1, Art. 5](#)

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Cal Pen Code § 30390

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§ 30390. License application fee

(a) The Department of Justice may charge ammunition vendor license applicants a reasonable fee sufficient to reimburse the department for the reasonable, estimated costs of administering the license program, including the enforcement of this program and maintenance of the registry of ammunition vendors.

(b) The fees received by the department pursuant to this article shall be deposited in the Ammunition Vendors Special Account, which is hereby created. Notwithstanding [Section 13340 of the Government Code](#), the revenue in the fund is continuously appropriated for use by the department for the purpose of implementing, administering and enforcing the provisions of this article, and for collecting and maintaining information submitted pursuant to [Section 30352](#).

(c) The revenue in the Firearms Safety and Enforcement Special Fund shall also be available upon appropriation to the department for the purpose of implementing and enforcing the provisions of this article.

History

Adopted by voters, Prop. 63 § 8.16, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

Research References & Practice Aids

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§ 30395. Determination of eligibility for license

(a) The Department of Justice is authorized to issue ammunition vendor licenses to applicants who the department has determined, either as an individual or a responsible person, are not prohibited from possessing, receiving, owning, or purchasing ammunition under subdivision (a) of [Section 30305](#) or federal law, and who provide a copy of any regulatory or business license required by local government, a valid seller's permit issued by the State Board of Equalization, a federal firearms license if the person is federally licensed, and a certificate of eligibility issued by the department.

(b) The department shall keep a registry of all licensed ammunition vendors. Law enforcement agencies shall be provided access to the registry for law enforcement purposes.

(c) An ammunition vendor license is subject to forfeiture for a breach of any of the prohibitions and requirements of Article 2 (commencing with [Section 30300](#)) or Article 3 (commencing with [Section 30342](#)).

History

Adopted by voters, Prop. 63 § 8.16, effective November 9, 2016.

Annotations

Notes

Editor's Notes—

For title, findings and declarations, purpose and intent, preemption, amendment, and severability of the Safety for All Act of 2016 (Prop. 63), see the 2016 Note following [Pen C § 25250](#).

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2020, an electronic PDF of APPELLEES' ANSWERING BRIEF was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: July 31, 2020

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady
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