

AMENDED IN ASSEMBLY JUNE 5, 2014

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN SENATE MAY 15, 2013

AMENDED IN SENATE APRIL 3, 2013

SENATE BILL

No. 396

Introduced by ~~Senators Hancock and Steinberg~~ Senator De León

(~~Coauthor: Senator Jackson~~)

(Principal coauthor: Senator Lara)

(Principal coauthors: Assembly Members Alejo, Fong, and Williams)

(Coauthors: Senators Correa, Lieu, and Padilla)

*(Coauthors: Assembly Members Bonta, Chau, Gonzalez,
V. Manuel Pérez, Rendon, and Yamada)*

February 20, 2013

An act to ~~amend Sections 16350, 16740, 32310, 32400, 32405, 32435, and 32450 of the Penal Code, relating to firearms; repeal Sections 48215 and 66010.8 of the Education Code, to repeal Section 53069.65 of the Government Code, to repeal Chapter 1.3 (commencing with Section 130) of Part 1 of Division 1 of the Health and Safety Code, to repeal Section 834b of the Penal Code, and to repeal Section 10001.5 of the Welfare and Institutions Code, relating to public services.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as amended, ~~Hancock De León. Firearms: magazine capacity. Public services.~~

Proposition 187, which was approved by the voters at the November 8, 1994, statewide general election, made illegal aliens ineligible for

specified public social services, public health care services, and public school education at the elementary, secondary, and post-secondary levels. Among other things, the proposition also required various state and local agencies to report suspected illegal aliens, as specified, and required the Attorney General to perform certain tasks in connection with transmitting and retaining those reports. These provisions of Proposition 187 were rendered unenforceable after a federal court found them to be preempted by the United States Constitution and other federal law.

This bill would repeal the unenforceable provisions of Proposition 187, as described above.

~~(1) Existing law, for purposes pertaining to the ammunition capacity of certain assault weapons, defines “capacity to accept more than 10 rounds” to mean capable of accommodating more than 10 rounds, but specifies that this term does not apply to a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.~~

~~This bill would revise that definition to mean capable of holding more than 10 rounds, but not applying to a feeding device that has been permanently altered so that it cannot hold more than 10 rounds.~~

~~(2) Existing law prohibits the sale, gift, and loan of a large-capacity magazine. Existing law defines “large-capacity magazine” to mean any ammunition feeding device with the capacity to accept more than 10 rounds, but provides that the definition may not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.~~

~~This bill would include within that definition of large-capacity magazine a feeding device that had a capacity of more than 10 rounds but has been permanently modified to hold no more than 10 rounds of ammunition, and would exclude from that definition a magazine that is only of sufficient length to hold no more than 10 rounds of ammunition.~~

~~This bill, commencing July 1, 2014, would make it an infraction punishable by a fine not to exceed \$100, or a misdemeanor punishable by a fine not to exceed \$100, by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment, for any person to possess any large-capacity magazine, regardless of the date the magazine was acquired. The bill would authorize various methods by which a person in lawful possession of a large-capacity magazine may dispose of the magazine prior to the July 1, 2014, prohibition on possession.~~

~~(3) Existing law creates various exceptions to that crime, which include, but are not limited to, the sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by the holder of a special weapons permit for use as a prop for a motion picture, or any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.~~

~~This bill would make conforming changes by adding possession to those provisions.~~

~~This bill would incorporate additional changes to Section 32310 of the Penal Code proposed by AB 48 that would become operative if this bill and AB 48 are both enacted and this bill is enacted last.~~

~~By creating a new crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: *yes-no*.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 48215 of the Education Code is repealed.~~
- 2 ~~48215. (a) No public elementary or secondary school shall~~
- 3 ~~admit, or permit the attendance of, any child who is not a citizen~~
- 4 ~~of the United States, an alien lawfully admitted as a permanent~~
- 5 ~~resident, or a person who is otherwise authorized under federal~~
- 6 ~~law to be present in the United States.~~
- 7 ~~(b) Commencing January 1, 1995, each school district shall~~
- 8 ~~verify the legal status of each child enrolling in the school district~~
- 9 ~~for the first time in order to ensure the enrollment or attendance~~
- 10 ~~only of citizens, aliens lawfully admitted as permanent residents,~~
- 11 ~~or persons who are otherwise authorized to be present in the United~~
- 12 ~~States.~~
- 13 ~~(c) By January 1, 1996, each school district shall have verified~~
- 14 ~~the legal status of each child already enrolled and in attendance in~~

1 the school district in order to ensure the enrollment or attendance
2 only of citizens, aliens lawfully admitted as permanent residents,
3 or persons who are otherwise authorized under federal law to be
4 present in the United States.

5 ~~(d) By January 1, 1996, each school district shall also have~~
6 ~~verified the legal status of each parent or guardian of each child~~
7 ~~referred to in subdivisions (b) and (c), to determine whether such~~
8 ~~parent or guardian is one of the following:~~

9 ~~(1) A citizen of the United States.~~

10 ~~(2) An alien lawfully admitted as a permanent resident.~~

11 ~~(3) An alien admitted lawfully for a temporary period of time.~~

12 ~~(e) Each school district shall provide information to the State~~
13 ~~Superintendent of Public Instruction, the Attorney General of~~
14 ~~California, and the United States Immigration and Naturalization~~
15 ~~Service regarding any enrollee or pupil, or parent or guardian,~~
16 ~~attending a public elementary or secondary school in the school~~
17 ~~district determined or reasonably suspected to be in violation of~~
18 ~~federal immigration laws within forty-five days after becoming~~
19 ~~aware of an apparent violation. The notice shall also be provided~~
20 ~~to the parent or legal guardian of the enrollee or pupil, and shall~~
21 ~~state that an existing pupil may not continue to attend the school~~
22 ~~after ninety calendar days from the date of the notice, unless legal~~
23 ~~status is established.~~

24 ~~(f) For each child who cannot establish legal status in the United~~
25 ~~States, each school district shall continue to provide education for~~
26 ~~a period of ninety days from the date of the notice. Such ninety~~
27 ~~day period shall be utilized to accomplish an orderly transition to~~
28 ~~a school in the child's country of origin. Each school district shall~~
29 ~~fully cooperate in this transition effort to ensure that the educational~~
30 ~~needs of the child are best served for that period of time.~~

31 *SEC. 2. Section 66010.8 of the Education Code is repealed.*

32 ~~66010.8.—(a) No public institution of postsecondary education~~
33 ~~shall admit, enroll, or permit the attendance of any person who is~~
34 ~~not a citizen of the United States, an alien lawfully admitted as a~~
35 ~~permanent resident in the United States, or a person who is~~
36 ~~otherwise authorized under federal law to be present in the United~~
37 ~~States.~~

38 ~~(b) Commencing with the first term or semester that begins after~~
39 ~~January 1, 1995, and at the commencement of each term or~~
40 ~~semester thereafter, each public postsecondary educational~~

1 ~~institution shall verify the status of each person enrolled or in~~
2 ~~attendance at that institution in order to ensure the enrollment or~~
3 ~~attendance only of United States citizens, aliens lawfully admitted~~
4 ~~as permanent residents in the United States, and persons who are~~
5 ~~otherwise authorized under federal law to be present in the United~~
6 ~~States.~~

7 ~~(e) No later than 45 days after the admissions officer of a public~~
8 ~~postsecondary educational institution becomes aware of the~~
9 ~~application, enrollment, or attendance of a person determined to~~
10 ~~be, or who is under reasonable suspicion of being, in the United~~
11 ~~States in violation of federal immigration laws, that officer shall~~
12 ~~provide that information to the State Superintendent of Public~~
13 ~~Instruction, the Attorney General of California, and the United~~
14 ~~States Immigration and Naturalization Service. The information~~
15 ~~shall also be provided to the applicant, enrollee, or person admitted.~~

16 ~~SEC. 3. Section 53069.65 of the Government Code is repealed.~~

17 ~~53069.65. Whenever the state or a city, or a county, or any~~
18 ~~other legally authorized local governmental entity with~~
19 ~~jurisdictional boundaries reports the presence of a person who is~~
20 ~~suspected of being present in the United States in violation of~~
21 ~~federal immigration laws to the Attorney General of California,~~
22 ~~that report shall be transmitted to the United States Immigration~~
23 ~~and Naturalization Service. The Attorney General shall be~~
24 ~~responsible for maintaining on-going and accurate records of such~~
25 ~~reports, and shall provide any additional information that may be~~
26 ~~requested by any other government entity.~~

27 ~~SEC. 4. Chapter 1.3 (commencing with Section 130) of Part 1~~
28 ~~of Division 1 of the Health and Safety Code, as added by Section~~
29 ~~6 of Proposition 187 on November 8, 1994, is repealed.~~

30 ~~SEC. 5. Section 834b of the Penal Code is repealed.~~

31 ~~834b. (a) Every law enforcement agency in California shall~~
32 ~~fully cooperate with the United States Immigration and~~
33 ~~Naturalization Service regarding any person who is arrested if he~~
34 ~~or she is suspected of being present in the United States in violation~~
35 ~~of federal immigration laws.~~

36 ~~(b) With respect to any such person who is arrested, and~~
37 ~~suspected of being present in the United States in violation of~~
38 ~~federal immigration laws, every law enforcement agency shall do~~
39 ~~the following:~~

1 ~~(1) Attempt to verify the legal status of such person as a citizen~~
2 ~~of the United States, an alien lawfully admitted as a permanent~~
3 ~~resident, an alien lawfully admitted for a temporary period of time~~
4 ~~or as an alien who is present in the United States in violation of~~
5 ~~immigration laws. The verification process may include, but shall~~
6 ~~not be limited to, questioning the person regarding his or her date~~
7 ~~and place of birth, and entry into the United States, and demanding~~
8 ~~documentation to indicate his or her legal status.~~

9 ~~(2) Notify the person of his or her apparent status as an alien~~
10 ~~who is present in the United States in violation of federal~~
11 ~~immigration laws and inform him or her that, apart from any~~
12 ~~criminal justice proceedings, he or she must either obtain legal~~
13 ~~status or leave the United States.~~

14 ~~(3) Notify the Attorney General of California and the United~~
15 ~~States Immigration and Naturalization Service of the apparent~~
16 ~~illegal status and provide any additional information that may be~~
17 ~~requested by any other public entity.~~

18 ~~(e) Any legislative, administrative, or other action by a city,~~
19 ~~county, or other legally authorized local governmental entity with~~
20 ~~jurisdictional boundaries, or by a law enforcement agency, to~~
21 ~~prevent or limit the cooperation required by subdivision (a) is~~
22 ~~expressly prohibited.~~

23 *SEC. 6. Section 10001.5 of the Welfare and Institutions Code*
24 *is repealed.*

25 ~~10001.5.—(a) In order to carry out the intention of the People~~
26 ~~of California that only citizens of the United States and aliens~~
27 ~~lawfully admitted to the United States may receive the benefits of~~
28 ~~public social services and to ensure that all persons employed in~~
29 ~~the providing of those services shall diligently protect public funds~~
30 ~~from misuse, the provisions of this section are adopted.~~

31 ~~(b) A person shall not receive any public social services to which~~
32 ~~he or she may be otherwise entitled until the legal status of that~~
33 ~~person has been verified as one of the following:~~

34 ~~(1) A citizen of the United States.~~

35 ~~(2) An alien lawfully admitted as a permanent resident.~~

36 ~~(3) An alien lawfully admitted for a temporary period of time.~~

37 ~~(e) If any public entity in this state to whom a person has applied~~
38 ~~for public social services determines or reasonably suspects, based~~
39 ~~upon the information provided to it, that the person is an alien in~~

1 the United States in violation of federal law, the following
2 procedures shall be followed by the public entity:

3 (1) The entity shall not provide the person with benefits or
4 services.

5 (2) The entity shall, in writing, notify the person of his or her
6 apparent illegal immigration status, and that the person must either
7 obtain legal status or leave the United States.

8 (3) The entity shall also notify the State Director of Social
9 Services, the Attorney General of California, and the United States
10 Immigration and Naturalization Service of the apparent illegal
11 status, and shall provide any additional information that may be
12 requested by any other public entity.

13 SECTION 1. Section 16350 of the Penal Code is amended to
14 read:

15 16350. As used in Section 30515, “capacity to accept more
16 than 10 rounds” means capable of holding more than 10 rounds.
17 The term does not apply to a feeding device that has been
18 permanently altered so that it cannot hold more than 10 rounds.

19 SEC. 2. Section 16740 of the Penal Code is amended to read:

20 16740. (a) As used in this part, “large-capacity magazine”
21 means any ammunition feeding device with the capacity to accept
22 more than 10 rounds. As used in this part, “large-capacity
23 magazine” also includes a feeding device that had a capacity of
24 more than 10 rounds but has been permanently modified to hold
25 no more than 10 rounds of ammunition.

26 (b) As used in this part, “large-capacity magazine” does not
27 include any of the following:

28 (1) A magazine that is only of sufficient length to hold no more
29 than 10 rounds of ammunition.

30 (2) A .22 caliber tube ammunition feeding device.

31 (3) A tubular magazine that is contained in a lever-action
32 firearm.

33 SEC. 3. Section 32310 of the Penal Code is amended to read:

34 32310. (a) Except as provided in Article 2 (commencing with
35 Section 32400) of this chapter and in Chapter 1 (commencing with
36 Section 17700) of Division 2 of Title 2, any person in this state
37 who manufactures or causes to be manufactured, imports into the
38 state, keeps for sale, or offers or exposes for sale, or who gives,
39 or lends, any large-capacity magazine is punishable by

1 ~~imprisonment in a county jail not exceeding one year or~~
2 ~~imprisonment pursuant to subdivision (h) of Section 1170.~~

3 ~~(b) Except as provided in Article 2 (commencing with Section~~
4 ~~32400) of this chapter and in Chapter 1 (commencing with Section~~
5 ~~17700) of Division 2 of Title 2, commencing July 1, 2014, any~~
6 ~~person in this state who possesses any large-capacity magazine,~~
7 ~~regardless of the date the magazine was acquired, is guilty of an~~
8 ~~infraction punishable by a fine not to exceed one hundred dollars~~
9 ~~(\$100), or is guilty of a misdemeanor punishable by a fine not to~~
10 ~~exceed one hundred dollars (\$100), by imprisonment in a county~~
11 ~~jail not to exceed one year, or by both that fine and imprisonment.~~

12 ~~(c) Any person who, prior to July 1, 2014, legally possesses a~~
13 ~~large-capacity magazine shall dispose of that magazine by any of~~
14 ~~the following means:~~

15 ~~(1) Remove the large-capacity magazine from the state.~~

16 ~~(2) Prior to July 1, 2014, sell the large-capacity magazine to a~~
17 ~~licensed firearms dealer.~~

18 ~~(3) Destroy the large-capacity magazine.~~

19 ~~(4) Surrender the large-capacity magazine to a law enforcement~~
20 ~~agency for destruction.~~

21 ~~SEC. 3.5. Section 32310 of the Penal Code is amended to read:~~

22 ~~32310. (a) Except as provided in Article 2 (commencing with~~
23 ~~Section 32400) of this chapter and in Chapter 1 (commencing with~~
24 ~~Section 17700) of Division 2 of Title 2, any person in this state~~
25 ~~who manufactures or causes to be manufactured, imports into the~~
26 ~~state, keeps for sale, or offers or exposes for sale, or who gives,~~
27 ~~lends, buys, or receives any large-capacity magazine is punishable~~
28 ~~by imprisonment in a county jail not exceeding one year or~~
29 ~~imprisonment pursuant to subdivision (h) of Section 1170.~~

30 ~~(b) Except as provided in Article 2 (commencing with Section~~
31 ~~32400) of this chapter and in Chapter 1 (commencing with Section~~
32 ~~17700) of Division 2 of Title 2, commencing July 1, 2014, any~~
33 ~~person in this state who possesses any large-capacity magazine,~~
34 ~~regardless of the date the magazine was acquired, is guilty of an~~
35 ~~infraction punishable by a fine not to exceed one hundred dollars~~
36 ~~(\$100), or is guilty of a misdemeanor punishable by a fine not to~~
37 ~~exceed one hundred dollars (\$100), by imprisonment in a county~~
38 ~~jail not to exceed one year, or by both that fine and imprisonment.~~

1 ~~(e) Any person who, prior to July 1, 2014, legally possesses a~~
2 ~~large-capacity magazine shall dispose of that magazine by any of~~
3 ~~the following means:~~

4 ~~(1) Remove the large-capacity magazine from the state.~~

5 ~~(2) Prior to July 1, 2014, sell the large-capacity magazine to a~~
6 ~~licensed firearms dealer.~~

7 ~~(3) Destroy the large-capacity magazine.~~

8 ~~(4) Surrender the large-capacity magazine to a law enforcement~~
9 ~~agency for destruction.~~

10 ~~(d) For purposes of this section, “manufacturing” includes both~~
11 ~~fabricating a magazine and assembling a magazine from a~~
12 ~~combination of parts, including, but not limited to, the body, spring,~~
13 ~~follower, and floor plate or end plate, to be a fully functioning~~
14 ~~large-capacity magazine.~~

15 ~~SEC. 4. Section 32400 of the Penal Code is amended to read:~~

16 ~~32400. Section 32310 does not apply to the sale of, giving of,~~
17 ~~lending of, possession of, importation into this state of, or purchase~~
18 ~~of, any large-capacity magazine to or by any federal, state, county,~~
19 ~~city and county, or city agency that is charged with the enforcement~~
20 ~~of any law, for use by agency employees in the discharge of their~~
21 ~~official duties, whether on or off duty, and where the use is~~
22 ~~authorized by the agency and is within the course and scope of~~
23 ~~their duties.~~

24 ~~SEC. 5. Section 32405 of the Penal Code is amended to read:~~

25 ~~32405. Section 32310 does not apply to the sale to, lending to,~~
26 ~~transfer to, purchase by, receipt of, possession of, or importation~~
27 ~~into this state of, a large-capacity magazine by a sworn peace~~
28 ~~officer, as defined in Chapter 4.5 (commencing with Section 830)~~
29 ~~of Title 3 of Part 2, who is authorized to carry a firearm in the~~
30 ~~course and scope of that officer’s duties.~~

31 ~~SEC. 6. Section 32435 of the Penal Code is amended to read:~~

32 ~~32435. Section 32310 does not apply to any of the following:~~

33 ~~(a) The sale of, giving of, lending of, possession of, importation~~
34 ~~into this state of, or purchase of, any large-capacity magazine, to~~
35 ~~or by any entity that operates an armored vehicle business pursuant~~
36 ~~to the laws of this state.~~

37 ~~(b) The lending and possession of large-capacity magazines by~~
38 ~~an entity specified in subdivision (a) to its authorized employees;~~
39 ~~while in the course and scope of employment for purposes that~~
40 ~~pertain to the entity’s armored vehicle business.~~

1 ~~(e) The return of those large-capacity magazines to the entity~~
2 ~~specified in subdivision (a) by those employees specified in~~
3 ~~subdivision (b).~~

4 ~~SEC. 7. Section 32450 of the Penal Code is amended to read:~~

5 ~~32450. Section 32310 does not apply to the purchase or~~
6 ~~possession of a large-capacity magazine by the holder of a special~~
7 ~~weapons permit issued pursuant to Section 31000, 32650, or 33300,~~
8 ~~or pursuant to Article 3 (commencing with Section 18900) of~~
9 ~~Chapter 1 of Division 5 of Title 2, or pursuant to Article 4~~
10 ~~(commencing with Section 32700) of Chapter 6 of this division,~~
11 ~~for any of the following purposes:~~

12 ~~(a) For use solely as a prop for a motion picture, television, or~~
13 ~~video production.~~

14 ~~(b) For export pursuant to federal regulations.~~

15 ~~(c) For resale to law enforcement agencies, government~~
16 ~~agencies, or the military, pursuant to applicable federal regulations.~~

17 ~~SEC. 8. Section 3.5 of this bill incorporates amendments to~~
18 ~~Section 32310 of the Penal Code proposed by both this bill and~~
19 ~~Assembly Bill 48. It shall only become operative if (1) both bills~~
20 ~~are enacted and become effective on or before January 1, 2014,~~
21 ~~(2) each bill amends Section 32310 of the Penal Code, and (3) this~~
22 ~~bill is enacted after Assembly Bill 48, in which case Section 3 of~~
23 ~~this bill shall not become operative.~~

24 ~~SEC. 9. No reimbursement is required by this act pursuant to~~
25 ~~Section 6 of Article XIII B of the California Constitution because~~
26 ~~the only costs that may be incurred by a local agency or school~~
27 ~~district will be incurred because this act creates a new crime or~~
28 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
29 ~~for a crime or infraction, within the meaning of Section 17556 of~~
30 ~~the Government Code, or changes the definition of a crime within~~
31 ~~the meaning of Section 6 of Article XIII B of the California~~
32 ~~Constitution.~~

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