

1-1-2006

# Chapter 681: Keeping Ammunition out of the Hands of Minors

Jonathan W. Peters

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

Part of the [Criminal Law Commons](#), and the [Legislation Commons](#)

## Recommended Citation

Jonathan W. Peters, *Chapter 681: Keeping Ammunition out of the Hands of Minors*, 37 MCGEORGE L. REV. 336 (2006).  
Available at: <https://scholarlycommons.pacific.edu/mlr/vol37/iss2/22>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

# Chapter 681: Keeping Ammunition Out of the Hands of Minors

*Jonathan W. Peters*

## *Code Section Affected*

Penal Code § 12316 (amended).

SB 48 (Scott); 2005 STAT. Ch. 681.

## I. INTRODUCTION

Chapter 681 removes the element of “knowing the person to be under the age” of eighteen or twenty-one, as applicable,<sup>1</sup> from the definition of the offense of selling ammunition to an under-age person.<sup>2</sup> In its stead, Chapter 681 requires that an ammunition retailer provide proof that the dealer “demanded, was shown, and acted in reasonable reliance upon, bona fide evidence of majority” for the affirmative defense to a charge of selling ammunition to under-age persons.<sup>3</sup> In other words, the retailer must somehow demonstrate that they checked the identification of the purchaser as a defense against the charge of unlawful sale of ammunition to a minor.<sup>4</sup>

Supporters of Chapter 681 argue that, although it is illegal for minors to purchase ammunition, there is no way to ensure that they do not.<sup>5</sup> They identify the prior law as a policy that encouraged a “‘Don’t Ask, Don’t Tell’ identification-check policy.”<sup>6</sup>

Supporters also assert that the change instituted by Chapter 681 will make laws regarding the sale of ammunition to minors analogous to laws governing the sale of alcohol to minors.<sup>7</sup> Proponents assert that, while nearly 7,500 juveniles were arrested in 2003 for weapons-related offenses, only 1,500 juveniles were arrested for driving under the influence (DUI) in the same year.<sup>8</sup> They argue that

---

1. CAL. PENAL CODE § 12316 (enacted by Chapter 681) (providing that a person must be twenty-one years of age to purchase handgun ammunition and eighteen years of age to purchase ammunition intended to be used in a rifle).

2. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 2 (June 14, 2005).

3. CAL. PENAL CODE § 12316 (defining a minor as anyone under eighteen years of age except for “ammunition designed and intended for use in a handgun to a person under twenty-one years of age”); BLACK’S LAW DICTIONARY 430 (7th ed. 1999) (defining “affirmative defense” as “[a] defendant’s assertion raising new facts and arguments that, if true, will defeat the plaintiff’s or prosecution’s claim, even if all allegations in the complaint are true”); *see also infra* Part IV.A.

4. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 48 at 2 (June 29, 2005); *see also* CAL. PENAL CODE § 12316 (“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 subdivision.”).

5. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 2 (June 14, 2005).

6. *Id.*

7. *Id.* at 4.

8. *Id.* at 2-3.

Chapter 681 will assist in the reduction of weapons-related juvenile offenses in the same way that requiring vendors to check identifications reduced sales of alcohol to minors.<sup>9</sup> They assert that the relatively low number of juvenile arrests for DUI is a result, at least in part, of the strict law requiring that vendors check identifications.<sup>10</sup>

Opponents of Chapter 681 allege that the new law unfairly shifts the burden of proof from the prosecution to the defense<sup>11</sup> and that the real purpose of the bill is to harass firearms dealers, rather than to prevent the sale of ammunition to minors.<sup>12</sup>

## II. LEGAL BACKGROUND

Prior to the enactment of Chapter 681, for a vendor to be in violation of selling ammunition to a minor, that vendor had to know<sup>13</sup> that the buyer was a minor.<sup>14</sup> There was no state law requiring vendors to check the identification of purchasers to verify their age.<sup>15</sup> Supporters of Chapter 681 argue that the prior law was, in fact, a disincentive to check identification of the ammunition purchasers because sellers would be guilty only of a crime if they actually knew the buyer was underage.<sup>16</sup> Knowledge, in other words, could be avoided simply by not asking the buyer's age.<sup>17</sup>

In 2004, Governor Schwarzenegger vetoed Senate Bill 1152, which contained, among other items, the provisions currently in Chapter 681.<sup>18</sup> Governor Schwarzenegger's veto message, however, indicated that the provisions contained in Chapter 681 were not the reasons for the veto.<sup>19</sup> Additionally, federal law makes it

9. *Id.*

10. *See id.* at 2 (“One reason for the proliferation of weapons in the hands of juveniles may be the weakness of current law.”).

11. *Id.* at 7-8.

12. *Id.* at 8.

13. *See* CAL. PENAL CODE § 7(5) (West 2005) (stating that the word “knowingly” in California codes is defined as “only a knowledge that the facts exist which bring the act or omission within the provisions of this code”); *see also* *People v. McCalla*, 63 Cal. App. 783, 793, 220 P. 436, 440 (1923) (“[K]nowingly” means ‘with knowledge,’ and when used in a prohibitory statute is usually [sic] held to refer to a knowledge of the essential facts; and from such knowledge of facts the law presumes a knowledge of the legal consequences arising from the performance of the prohibited act”), *overruled by* *People v. Elliot*, 54 Cal. 2d 498, 6 Cal. Rptr. 753 (1960).

14. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 4 (Mar. 15, 2005); *see also* CAL. PENAL CODE § 7.5 (defining “knowingly” as “only a knowledge that the facts exist which bring the act or omission within the provisions of this code”).

15. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 4 (Mar. 15, 2005).

16. *Id.*

17. *See* ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 48, at 2 (June 29, 2005) (“[C]urrent law actually serves as a disincentive for sellers to check the identification of ammunition purchasers because sellers are only guilty of a crime if they know a buyer is underage.”).

18. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 5 (Mar. 15, 2005).

19. *See id.* (quoting the Governor's veto message, which gives the reasons for the veto, none of which dealt with the provisions contained in Chapter 681).

unlawful for a vendor of ammunition to sell to “any individual who the licensee knows or has reasonable cause to believe is less than” eighteen or twenty-one years of age, as applicable.<sup>20</sup>

### III. CHAPTER 681

Supporters of the change made by Chapter 681 say that the change is necessary to curb juvenile gun violence.<sup>21</sup> Indeed, supporters contend that Chapter 681 closes what was a “loophole” in the state law.<sup>22</sup> Supporters contend that this “loophole” resulted because, under the prior law, sellers were discouraged from checking identifications because it was a crime to sell ammunition to minors only if the seller knew the buyer was underage.<sup>23</sup>

Chapter 681 deleted “knowing” from the statute relating to the sale of ammunition to minors.<sup>24</sup> Instead, Chapter 681 inserted a requirement that the seller of ammunition “act . . . in reasonable reliance” on evidence of the buyer’s proof of majority.<sup>25</sup> This “reasonable reliance” is a defense to any criminal prosecution of the ammunition merchant under this section.<sup>26</sup>

Chapter 681 amended the law to make it similar to offenses such as selling cigarettes and alcohol to persons under the age of eighteen.<sup>27</sup> When prosecuting such a case, the state need only show that the merchant sold the alcohol or cigarettes to the minor.<sup>28</sup> The merchant may defend himself by showing evidence that he relied on identification shown to him by the minor.<sup>29</sup>

20. 18 U.S.C.A. § 922(b)(1) (West 2005); SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 1 (Mar. 15, 2005).

21. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 2 (June 14, 2005) (“One reason for the proliferation of weapons in the hands of juveniles may be the weakness of current law.”).

22. Letter from Juliet A. Leftwich, Senior Couns., Legal Comty. Against Violence, to Senator Jack Scott, Cal. State Senate (Apr. 11, 2005) [hereinafter LCAV Letter] (on file with the *McGeorge Law Review*); see also Letter from William Durston, President, Physicians for Soc. Responsibility, Sacramento Chapter, to Senator Jack Scott, Cal. State Senate (Apr. 25, 2005) [hereinafter PSR Letter] (on file with the *McGeorge Law Review*) (stating that that law prior to the enactment of Chapter 681 allowed merchants to “sell ammunition to minors with virtual impunity”).

23. Letter from Rockard Delgadillo, City Att’y, L.A., to Senator Jack Scott, Cal. State Senate (June 16, 2005) [hereinafter Delgadillo Letter] (on file with the *McGeorge Law Review*) (“SB 48 closes this loophole by removing the element of knowledge of the buyer’s age, thus encouraging sellers to verify the buyer’s age before completing a sale of ammunition.”).

24. CAL. PENAL CODE § 12316(a)(1)(B) (amended by Chapter 681).

25. *Id.* § 12316 (a)(2).

26. *Id.*; see *infra* Part IV.A. (detailing the case law and the elements necessary for the defense of “reasonable reliance” when accused of selling alcohol to a minor).

27. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 5-6 (June 14, 2005).

28. *Id.* at 6.

29. *Id.*; CAL. BUS. & PROF. CODE § 25660 (West 2005) (“Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator’s license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person.”);

## IV. ANALYSIS

Was Chapter 681 necessary to close a loophole<sup>30</sup> that allowed merchants to sell ammunition to minors with “virtual impunity?”<sup>31</sup> Or is this simply another anti-gun law that will be used to harass gun merchants to the point that many will simply cease to sell ammunition altogether?<sup>32</sup>

A. *Similarity to the Sale of Alcohol to Minors*

Supporters contend that the sale of ammunition to minors “is a serious public safety concern.”<sup>33</sup> They say the proliferation of weapons in the hands of juveniles is related to the “weakness” in the prior law and that Chapter 681 is the remedy.<sup>34</sup> They contend that the retailers of ammunition are now very likely to check identification and thus aid in curbing gun-related injuries and deaths among juveniles.<sup>35</sup>

Supporters also contend the change is “overwhelmingly” supported by the public because all Chapter 681 does is make the sale of ammunition to minors similar to the laws regarding the sale of alcohol to minors.<sup>36</sup> Therefore, a brief look at the law with regards to the sale of alcohol to minors is appropriate.

California Business and Professions Code section 25660 allows a vendor of alcohol to rely on a document issued by a federal, state, county, or municipal government or subdivision or agency thereof, including, but not limited to, a motor vehicles operator’s license or an identification card issued to a member of

*see also* *Provigo Corp. v. Alcoholic Beverage Control Appeals Bd.*, 7 Cal. 4th 561, 569, 869 P.2d 1163, 1167-68 (1994) (“The seller may readily protect itself by requiring sales agents to routinely check identification. Reliance on bona fide evidence of majority and identity constitutes a defense to liability . . . [R]equiring such routine checks would appear to involve no greater burden on sales personnel than is already assumed when a prospective purchaser offers to pay by check or credit card.”).

30. *See* Delgadillo Letter, *supra* note 23 (“SB 48 closes this loophole by removing the element of knowledge of the buyer’s age, thus encouraging sellers to verify the buyer’s age before competing a sale of ammunition.”).

31. *See* PSR Letter, *supra* note 22 (suggesting that that law prior to the enactment of Chapter 681 allowed merchants to “sell ammunition to minors with virtual impunity”).

32. *See* Letter from Keith Ringenberg, President, Outdoor Sportsman’s Coal., to Senator Jack Scott, Cal. State Senate (Apr. 12, 2005) [hereinafter *Outdoor Sportsman Letter*] (on file with the *McGeorge Law Review*) (stating that it is their view that the purpose of SB 48 “is more to harass dealers than it is to deny any ammunition to underage individuals”); *see also* Letter from Dennis Anderson, Safari Club Int’l, to Senator Jack Scott, Cal. State Senate (Mar. 10, 2005) [hereinafter *Safari Letter*] (on file with the *McGeorge Law Review*) (asserting that the “intimidation of retailers, especially small business, that could result if SB 48 were enacted, could cause some to abandon the product line thus decreasing the availability of ammunition to sportsmen”).

33. Delgadillo Letter, *supra* note 23.

34. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 2 (June 14, 2005).

35. *See* PSR Letter, *supra* note 22 (“We believe that SB 48 is a logical step toward curbing the epidemic of gun violence among our youth.”).

36. Letter from Nick & Amanda Wilcox, State Council, Legis. Co-Chairs, Cal. Million Mom March, to Assembly Member Mark Leno, Cal. State Assembly (June 3, 2005) (on file with the *McGeorge Law Review*).

the Armed Forces, which contain the name, date of birth, description, and picture of the person.<sup>37</sup>

For a successful defense to a violation for the sale of alcohol to a minor, a vendor need not determine, at his peril,

whether the driver's license is a bona fide license of the party presenting it. Possession of the license is presumptive evidence that the license belonged to the holder . . . . Unless the personal appearance of the holder of the driver's license demonstrates above mere suspicion that he is not the legal owner of the license the [vendor] is justified in assuming the validity of the driver's license and in accepting the holder as the legal owner.<sup>38</sup>

"To prevail under . . . section [25660] it [is] incumbent upon the [vendor] to demand documentary proof of the customer's majority 'before furnishing any alcoholic beverage to a minor,'" and if the hearing officer or the Department of Alcoholic Beverage Control does not believe the vendor, the defense is not established.<sup>39</sup> It is also essential to the defense that the purchaser's license or other evidence of majority be presented by one whose appearance indicates that he could be of age and that the vendor makes a reasonable inspection of the document.<sup>40</sup>

Cases interpreting section 25660 have set forth three tests to determine the vendor's compliance with the provision: (1) the vendor "who makes a diligent inspection of the documentary evidence of majority and identity offered by the customer at or about the time of the sale is entitled to rely upon its apparent genuineness;"<sup>41</sup> (2) a vendor "must exercise the caution which would be shown by a reasonable and prudent person in the same or similar circumstances;"<sup>42</sup> and

37. CAL. BUS. & PROF. CODE § 25660 (West 2005).

38. *Conti v. State Bd. of Equalization*, 113 Cal. App. 2d 465, 466-67, 248 P.2d 31, 32 (1952).

39. *Molina v. Munro*, 145 Cal. App. 2d 601, 605, 302 P.2d 818, 820 (1956).

40. *Hollywood, Inc. v. Dep't. of Alcoholic Beverage Control*, 155 Cal. App. 2d 748, 753, 318 P. 2d 820, 823 (1957).

41. *Farah v. Alcoholic Beverage Control Appeals Bd.*, 159 Cal. App. 2d 335, 339, 324 P. 2d 98, 101 (1958); *see also Dethlefsen v. State Bd. Of Equalization*, 145 Cal. App. 2d 561, 567, 303 P. 2d 7, 11 (1956) ("[The] purpose of the legislation [section 25660] when enacted was to relieve vendors of alcoholic beverages from having in all events to determine at their peril the age of the purchaser. It was intended to furnish a readily applicable standard usable under the conditions generally obtaining which, when complied with, would constitute a defense if in fact the purchaser was under 21. A plan was hit upon whereby the vendor could demand that he be shown bona fide documentary evidence of majority and identity . . . . Obviously, to protect a vendor such evidence of majority and identity would have to be presented by a person whose appearance was such as to make it doubtful on which side of the line dividing minority from majority the purchaser was. When a doubt as to that would arise in good faith, it was intended that the vendor could rely upon documentary evidence of majority and identity such as [a driver's license] . . . but the bona fides . . . would be disclosed by reasonable inspection, the circumstances considered.").

42. *Farah*, 159 Cal. App. 2d at 339, 324 P. 2d at 101; *see also Hollywood, Inc.*, 155 Cal. App. 2d at 753, 318 P. 2d at 823 ("[Section 25660] now demands documentary evidence of majority and identity which is

(3) a vendor “must make the inspection of the documentary evidence and his appraisal of the physical appearance of the customer ‘immediately prior’ to the sale.”<sup>43</sup>

### B. A Costly Fix to Something that Was Not Broken

Opponents assert that the real purpose of the bill is to “harass dealers” with law enforcement sting operations thereby driving them from the business of selling ammunition.<sup>44</sup> Thus, opponents assert that the real purpose of the bill is to drive ammunition retailers out of business.<sup>45</sup> Opponents support their contention by asserting that it “has not been demonstrated that dealers are selling ammunition to youths in violation of both existing state and federal laws”<sup>46</sup> and that Chapter 681 addresses a theoretical but non-existent problem.<sup>47</sup> They assert, “if it isn’t broken, don’t fix it.”<sup>48</sup>

Opponents also allege that Chapter 681 promises years of costly litigation regarding its constitutionality.<sup>49</sup> The California Public Defenders Association (CPDA) contends that the change shifts the burden of proof to the defense to “show reasonable reliance upon bona fide evidence of majority and identity.”<sup>50</sup> They further argue that the Sixth Amendment to the Constitution guarantees a criminal defendant the right to require the prosecution to prove beyond a reasonable doubt the guilt of the defendant.<sup>51</sup>

In determining whether the traditional allocation of the burden of proof could be constitutionally altered, the courts have considered a number of factors. The first question to be resolved is the role of the facts at issue in the definition of the crime. Does shifting the burden of proof instruction concern an essential element

intrinsically bona fide and the mere fact of production of a [driver’s license] does not make the case . . . ‘[a vendor] does not establish an absolute defense by evidence that the minor produced an identification card purporting to show that the person in possession of the card is 21. The defense must be asserted in good faith, that is, the [vendor] must act as a reasonable and prudent man would have acted under the circumstances. Obviously, the appearance of the one producing the card, or the description on the card, or its nature, may well indicate that the person in possession of it is not the person described on such card,’” quoting *Keane v. Reilly*, 130 Cal. App. 2d 407, 410, 279 P.2d 152 (1955).

43. *Farah*, 159 Cal. App. 2d at 339, 324 P.2d at 101; see also *People v. Garrigan*, 137 Cal. App. 2d Supp. 854, 858, 289 P. 2d 892, 895 (Cal. App. Dep’t Super. Ct. 1955) (“[The] section now specifically requires that the demand and showing of evidence of identity and majority shall be accomplished ‘immediately prior to furnishing any alcoholic beverage to a person under 21 years of age.’”).

44. Outdoor Sportsman Letter, *supra* note 32.

45. *Id.*

46. *Id.*

47. Safari Letter, *supra* note 32.

48. Letter from Sharon Hensley, Legis. Coordinator, Cal. Sportsman’s Lobby, Inc., to Senator Jack Scott, Cal. State Senate (Apr. 12, 2005) (on file with the *McGeorge Law Review*).

49. Letter from Barry Broad, Shane Gusman, and Libby Sanchez, to Senate Pub. Safety Comm., Cal. State Assembly (Mar. 9, 2005) (on file with the *McGeorge Law Review*).

50. *Id.*

51. *Id.*

of the offense? If it does not, it may survive constitutional inspection. The constitutionality of the burden-shifting rule or device will turn on whether it “undermine[s] the fact finder’s responsibility at trial, based on the evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.”<sup>52</sup>

Despite the arguments of the CPDA, Chapter 681 will likely pass a constitutional challenge.<sup>53</sup> Chapter 681 would still require that the state, in any prosecution for the offense, show that the seller sold ammunition to a minor.<sup>54</sup> A proper defense to that charge would still be a reasonable belief that the buyer was the proper age.<sup>55</sup> “Courts have determined that the critical finding as to whether a statute impermissibly shifts the burden of proof to the defendant is . . . ‘whether it undermines the fact finder’s responsibility at trial, based on the evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.’”<sup>56</sup> “Deleting the requirement of showing knowledge seems to only change the nature of the offense rather than shift the burden of proving an essential element to the defendant.”<sup>57</sup>

Chapter 681’s similarity to the law prohibiting the sale of alcohol to minors makes it likely that it will withstand the constitutional test.<sup>58</sup>

## V. CONCLUSION

Treating the sale of ammunition to minors like the sale of alcohol to minors will close a loophole in the law that will “keep ammunition away from California’s youth.”<sup>59</sup> Requiring ammunition vendors to check identification and verify the age of the buyers will ensure that they are of legal age and will be one “step toward curbing the epidemic of gun violence among our youth.”<sup>60</sup>

52. *People v. Feno*, 154 Cal. App. 3d 719, 737, 201 Cal. Rptr. 513, 524 (1984) (Staniforth, J., dissenting).

53. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 5-6 (June 14, 2005) (arguing that because of Senate Bill 48’s similarity to Business and Professions Code section 25660 it will not be ruled unconstitutional).

54. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 5 (June 14, 2005).

55. *Id.*

56. *Id.* (quoting *Ulster County Ct. v. Allen*, 442 U.S. 140, 156 (1979)).

57. *Id.*

58. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 48, at 6 (June 14, 2005) (arguing that because of Chapter 681’s similarity to the offense of selling alcohol to a minor, the same standard of proof would apply for selling ammunition to a minor, and although the Constitutionality of section 25660 has not been squarely addressed by the court, “it assumed such in analyzing how the statute would apply the facts of a particular case” (citing to *In re Jennings*, 34 Cal. 4th 254, 262, 95 P.3d 906, 910 (2004))).

59. LCAV Letter, *supra* note 22.

60. PSR Letter, *supra* note 22.

Checking identifications to ensure the age of the buyers may be fixing a problem that does not exist, but it seems to be a small burden to ensure that ammunition stays in the hands of those for whom possession is lawful. Whether it curbs the current epidemic of gun violence among juveniles, Chapter 681's impact upon retailers appears to be minimal and will place yet another level of protection between children and ammunition.

\* \* \*