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MEMORANDUM

**Re: Senate Bill 610's New Requirements for Processing Applications
for Licenses to Carry Handguns Effective January 1, 2012**

Date: July 3, 2012

I. INTRODUCTION

California law establishes an application process via California Penal Code sections 26150 – 26225¹ for obtaining a license to publicly carry a handgun (a “CCW”). The issuing authority for a CCW is the sheriff or chief of police of the respective city, city and county, or county. P.C. §§ 26150, 26155

The issuing authority is statutorily authorized (and required²) to determine whether an applicant has “good cause” for a license, is of “good moral character,” and resides in the issuing authority’s jurisdiction (or, in some cases, spends substantial time in the county for business). Issuing authorities must also require the applicant to complete a training course of the issuing authority’s choosing, subject to some base statutory requirements. Issuing

¹ The Nonsubstantive Reorganization of the Deadly Weapon Statutes, effective January 1, 2012, changed the numbering of California Penal Code sections concerning firearms. Prior to that change, the laws governing Carry Licenses issuance were found at Penal Code sections 12050 – 12054. This memorandum uses the new numbers.

² See *Salute v. Pitchess*, 61 Cal. App. 3d 557 (1976).

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Re: Senate Bill 610's New Requirements for Processing Applications for Licenses to Carry Handguns Effective January 1, 2012

Date: July 3, 2012

authorities are also statutorily authorized to charge certain fees, but that authority is limited, as is the ability to impose conditions on applicants beyond what the Penal Code provides.

Senate Bill 610 (SB 610), effective January 1, 2012, changed some of the legal obligations of issuing authorities when processing applications for a CCW. Some of these changes create completely new legal requirements for issuing authorities, while others simply restate and clarify the law's previously existing requirements. This memorandum discusses each of SB 610's changes, and explains how issuing authorities can comply with them.

For ease of reference, SB 610 amended existing Penal Code sections 26165, 26190, and 26205, and added new Penal Code section 26202.

II. NEW REQUIREMENTS

1. Agencies Must Have a Published Written Policy Explaining Their Standards for Issuing a License to Carry a Handgun

Prior to the passage of SB 610, there was some confusion about whether Penal Code section 26160 (former section 12050.2) merely required issuing authorities to publish a written summary of section 26150 and subsections (a) and (b) of 26155 (former subsections (A) and (B) of 12050(a)(1)), or required them to publish their specific policies for evaluating applicants under those criteria. The revisions made by SB 610 clarify that, effective January 1, 2012, it is the latter. (*See* P.C. § 26202, requiring issuing authorities, when denying a CCW for lack of "good cause" to "state the reason from the department's published policy, described in Section 26160, as to why the determination was made," implying that Section 26160 requires the articulation of a specific "good cause" standard (and thus the other standards) in a written policy).

SB 610 therefore requires issuing authorities to publish an official written policy explaining the circumstances under which they consider an applicant to:

- a) Have "good cause" for a CCW;
- b) Be of "good moral character"; and
- c) Be a "resident" of the respective county or city (or, for sheriffs only, to qualify for a non-resident license based on business activity in the county).

Additionally, this official written policy must explain exactly what firearm training, if any, is required by the issuing authority per Penal Code section 26165.

2. Issuing Authorities Must Provide Specific Written Notice of Their "Good Cause" Determination

SB 610 added section 26202 to the California Penal Code. That section requires issuing authorities to provide a CCW applicant with *written notice* of their determination of the applicant's "good cause" per section

26150 or 26155. This written notice must inform the applicant that either:

- a) "Good cause" exists and the applicant should continue with any required training pursuant to Penal Code section 26165; or
- b) The CCW is denied for lack of "good cause," stating the specific reason why the applicant lacks "good cause" under the issuing authority's written policy (as required by section 26160).

To be clear, where an applicant is denied for lack of "good cause," the issuing authority must point to the specific aspect of its written "good cause" policy which the applicant has not met in order to justify its denial.

3. No Training Fee Can Be Required Until Written Notice of "Good Cause" Is Provided to the Applicant

Prior to SB 610, the law was unclear as to whether issuing authorities could charge a fee for the required training course that applicants are required to complete in order to be eligible for a CCW before "good cause" was determined, due to the ambiguous language in subsections (b)(1) and (g) of section 26190 (former sections 12054(j) and (d) respectively). And most issuing authorities interpreted those provisions as allowing them to. In response, SB 610 amended Penal Code section 26165's provisions regarding the training course, adding subsection (d), which now expressly prohibits issuing authorities from requiring an applicant to pay for any mandatory training course before a "good cause" determination is made as required under section 26202 described above.

4. Permissible and Prohibited Costs and Fees

SB 610 amended Penal Code section 26190's requirements regarding fees and conditions that may be imposed on CCW applicants. It makes it so issuing authorities can now account for the costs of any required written notices they must provide to applicants (e.g., determination of "good cause") in setting the amount of the fee they charge to process a CCW application (which still remains statutorily capped at \$100 maximum).

Through Penal Code section 26190, SB 610 also reaffirms that certain costs and fees beyond those expressly allowed by the Penal Code are prohibited. Although this appears to have already been the law before SB 610 was enacted, SB 610 now *expressly* prohibits issuing authorities from requiring applicants to obtain a liability insurance policy as a condition to obtaining a CCW.

5. Requirements for Section 26205

Finally, before SB 610 passed, Penal Code section 26205 merely required issuing authorities to notify applicants whether they were approved or denied a CCW within the provided time limit (90 days from the application's submission or 30 days from receipt of the California Department of Justice's background check, whichever is later). SB 610 amended section 26205 to require that the notice also state which of the specific statutory criteria found in section 26150 or 26155 (i.e., "good cause," "good moral character," "residency," or firearm training) the applicant failed to satisfy.

While section 26202 (described in part 2 above) requires issuing authorities to state the specific aspect of

Re: Senate Bill 610's New Requirements for Processing Applications for Licenses to Carry Handguns Effective January 1, 2012

Date: July 3, 2012

their written policy that an applicant does not meet when denied for lack of "good cause," when an applicant is denied for any reason, the issuing authority need only state the statutory criterion that was not met – i.e., lack of "good moral character," lack of residency, or failure to complete the required training. The issuing authority does not have to provide an explanation of why the applicant did not meet one of those criterion. Nothing prohibits them from providing such an explanation however.

III. CONCLUSION

The passage of SB 610 altered the law as to what is required of issuing authorities in processing CCW applications. Various groups are monitoring local agencies for compliance. We hope you find this memorandum helpful in explaining those requirements, so that your agency can conform its practice to current law.

For Additional Assistance

California firearm laws are particularly complex. There is great confusion about what the law requires among those who are responsible for enforcing it, as well as for those who choose to own a gun for work, hunting, sport, or to defend themselves and their families. There are now over 700 California state statutes regulating firearm manufacture, distribution, sale, and possession. This figure does not include court rulings, local ordinances, and written and unwritten policies of the Department of Justice, nor does it include complex and comprehensive overlapping federal laws and regulations. If you need clarification or assistance in complying with SB 610, please contact our office.

Michel & Associates, P.C. has the largest and most respected firearms law practice in California. For links to free information that may help you answer firearms law related questions, please consult the "[Firearms Law Reference Materials](#)" section of our website. To stay updated on firearms law issues, we encourage you to subscribe to our [Firearms Law newsletters](#). And, if you are interested in obtaining a copy of our Model Policy for issuing handgun carry licenses, please request one by submitting an email to helpdesk@michellawyers.com

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