

## Memorandum 2011-15

**Deadly Weapons: Minor Clean-Up Issues  
“Licensed Premises” (Item #1)**

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The Commission’s recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes* includes a list of “Minor Clean-Up Issues for Possible Future Legislative Attention.” See 38 Cal. L. Revision Comm’n Reports 217, 265-80 (2009). Item #1 on that list is consideration of whether certain definitions should be expanded to apply to the entirety of new Part 6 of the Penal Code. This memorandum examines the term “licensed premises.”

All statutory references in this memorandum are to the Penal Code, except as otherwise indicated. This memorandum examines the existing “old” sections, rather than the reorganized “new” sections that are scheduled to replace them.

## DEFINITION OF “LICENSED PREMISES”

The term “licensed premises” is defined, *for the purposes of Section 12071 only*, as follows:

As used in this section, “licensed premises,” “licensed place of business,” “licensee’s place of business,” or “licensee’s business premises” means the building designated in the license.

Section 12071(c)(3).

Section 12071 describes the requirements for attaining a state firearms *dealer’s* license as well as the conditions and terms that apply to licensed firearms dealers. It is clear from context that “the building designated in the license” is the dealer’s designated (and licensed) place of business.

## UNDEFINED USAGE OF THE TERM “LICENSED PREMISES”

There are other sections in the deadly weapons provisions that use the term “licensed premises.” Under existing law, those sections are not governed by the definition of the term provided in Section 12071(c)(3). See Sections 12035, 12036, 12072, 12083, 12086, 12318.

The remainder of this memorandum considers whether the usage of the term in those sections is consistent with the definition provided in Section 12071. That is, does the usage of the term in those sections refer to the place of business designated in a state *dealer's* license?

#### SECTIONS WHERE USAGE IS CONSISTENT WITH DEFINED MEANING

The sections discussed in this part of the memorandum appear to use the term “licensed premises” to refer to a dealer’s place of business, as designated in a state firearms dealer’s license issued under Section 12071.

#### **Sections 12035 and 12036**

Sections 12035(h) and 12036(i) both include the following language, which imposes a posting requirement on a dealer who is licensed under Section 12071:

Every person licensed under Section 12071 shall post within the *licensed premises* the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this chapter upon any person who keeps a loaded firearm.

(Emphasis added). It seems likely that the referenced premises are the dealer’s place of business that is designated in the Section 12071 license.

Therefore, it appears that the defined meaning of “licensed premises” could be applied to these sections without causing any change in the intended meaning.

#### **Section 12072**

In pertinent part, Section 12072(f)(2)(D)(ii)(IV) provides:

As part of the public education and notification program described in this subparagraph, the department shall ...: Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the *licensed premises* of dealers licensed pursuant to Section 12071 or at law enforcement agencies ....

(Emphasis added). Here, it is even clearer that the term “licensed premises” is referring to the place of business of a dealer licensed under Section 12071. The section says this expressly.

Therefore, it appears that the defined meaning of “licensed premises” could be applied to this section without causing any change in the intended meaning.

## SECTIONS WHERE USAGE IS INCONSISTENT WITH DEFINED MEANING

The term “licensed premises” is also used in a number of sections that are concerned with licenses other than a Section 12071 state dealer’s license (i.e., a state firearm *manufacturer’s* license, and *federal* licenses for firearm collectors, dealers, importers, and manufacturers). Those sections are discussed below. In these sections, it would be problematic to define the term “licensed premises” to refer to the place of business designated in a Section 12071 dealer’s license.

### **State Firearms Manufacturing License**

Sections 12085 and 12086 regulate firearms manufacturing. Section 12085 prohibits a single entity or party from manufacturing 100 or more firearms in a year without a valid manufacturer’s license. See Section 12085(a)-(b).

A state firearms manufacturer’s license must designate the building where the manufacturing will take place. See Section 12086(c)(1) (“The business shall be conducted only in the buildings designated in the license.”).

Section 12086(c)(9) requires that local law enforcement be notified of a manufacturer’s “licensed premises”:

(A) The licensee shall notify the chief of police or other head of the municipal police department in the city or city and county where the building designated in the license is located that the licensee is manufacturing firearms within that city or city and county and the location of the *licensed premises*.

(B) If there is no police department in the city or city and county where the building designated in the license is located, the licensee shall notify the sheriff of the county where the building designated in the license is located that the licensee is manufacturing firearms within that county and the location of the *licensed premises*.

Emphasis added.

It seems clear that the term “licensed premises” is being used in those provisions to refer back to the “building designated in the [manufacturing] license,” where “the licensee is manufacturing firearms.” There is nothing to suggest that the term was intended to refer to a building designated in a Section 12071 *dealer’s* license.

If the definition of “licensed premises” in Section 12071 were generalized to apply to Section 12086, it would seem to change the intended meaning of the provision, in a nonsensical way. Rather than referring to the location where a licensed manufacturer is carrying out manufacturing activity, it would instead

refer to a dealer's premises (even if the manufacturer does not have a dealer's license).

### **Federal Licenses**

Other provisions use the term "licensed premises" in the context of various types of federal firearms licenses.

#### *Federal Collector's License*

Sections 12072(f)(3), 12318(c)(5), and 12318(c)(6) relate to a person who is licensed as a firearms collector, "pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto ...."

Under the referenced federal statute, a federal collector's license must include a designation of the "*premises* from which [the collector] conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time." See 18 U.S.C. § 923(d)(1)(E)(ii) (emphasis added). Therefore, any use of the term "licensed premises" in a provision relating to a federally licensed firearms collector, could be referring to the place designated in the federal license, where collecting is conducted.

#### *Federal Dealer's, Importer's, or Manufacturer's License*

Section 12083(a) and (c)(1) relate to a person who is licensed as a dealer, importer, or manufacturer of firearms "pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code as a dealer, importer, or manufacturer of firearms whose licensed premises are within this state."

Under the referenced federal statute, a federal dealer's, importers, or manufacturer's license must include a designation of the "*premises* from which [the dealer, importer, or manufacturer] conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time." See 18 U.S.C. § 923(d)(1)(E)(i) (emphasis added). Therefore, any use of the term "licensed premises" in a provision relating to a federally licensed dealer, importer, or manufacturer of firearms, could be referring to the place designated in the federal license where those activities are conducted.

#### *Section 12072(f)(3)*

Section 12072(f)(3) provides:

Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose *licensed premises* are within this state, acquires a handgun that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, outside of this state, pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.”

(Emphasis added). It seems probable that the term “licensed premises” is used in that provision in reference to the premises designated in the federal collector’s license. There is nothing to indicate that the term is intended to refer to the premises designated in a Section 12071 dealer’s license (nor would such a reference make sense in this context).

*Section 12318(c)*

Section 12318 regulates the delivery and transfer of handgun ammunition. Subdivision (c) of the section contains a number of exemptions, including two that refer to the “licensed premises” of a federally licensed dealer or collector of firearms:

(5) Persons whose *licensed premises* are outside this state who are licensed as dealers or collectors of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(6) Persons licensed as collectors of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto whose *licensed premises* are within this state who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071.

Section 12318(c)(5)-(6) (emphasis added).

Paragraph (c)(5) relates to a federally licensed firearm dealer or collector, whose licensed premises are outside of California. In that context, it is likely that the term “licensed premises” is referring to the premises designated in the federal license.

Paragraph (c)(6) also concerns the licensed premises of a person who holds a federal collector’s license. Again, it seems likely that the term is referring back to

the federal collector's license, rather than a state dealer's license. The paragraph also refers to a "certificate of eligibility" issued pursuant to Section 12071. That certificate is not the equivalent of a state firearm's dealer's license. It is merely a certificate showing that a person is eligible to possess, receive, own, or purchase a firearm:

A person may request a certificate of eligibility from the Department of Justice. The Department of Justice shall examine its records and records available to the department in the National Instant Criminal Background Check System in order to determine if the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm and issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited by state or federal law from possessing firearms.

Section 12071(a)(4). The reference to that certificate of eligibility doesn't seem to change the meaning of "licensed premises," which still appears to refer to the premises designated in the federal collector's license.

*Section 12083(a)*

Section 12083(a) requires that the Department of Justice maintain a list of federally licensed dealers, importers, and manufacturers of firearms who are exempt from obtaining a state dealer's license under Section 12071:

Commencing January 1, 2008, the Department of Justice shall keep a centralized list of persons who identify themselves as being licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code as a dealer, importer, or manufacturer of firearms whose *licensed premises* are within this state and who declare to the department an exemption from the firearms dealer licensing requirements of Section 12070....

(Emphasis added.) It seems almost certain that the term "licensed premises" is being used in this provision to refer to the premises designated in the federal license. It would not make sense for the term to refer to the premises designated in a Section 12071 license, when discussing persons who are not required to hold such a license.

*Section 12083(c)(1)*

Section 12083(c)(1) provides:

(c)(1) Any person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code as a dealer,

importer, or manufacturer of firearms whose *licensed premises* are within this state shall not import or receive firearms from any source unless listed on the centralized list of firearms dealers pursuant to Section 12071, or the centralized list of exempted federal firearms dealers pursuant to subdivision (a), or the centralized list of firearms manufacturers pursuant to subdivision (f) of Section 12086.

(Emphasis added.) As before, the term “licensed premises” is probably being used in this provision to refer to the premises designated in the federal license, not a state dealer’s license. However, under this paragraph, a federally licensed firearm dealer might also be licensed in California as a firearms dealer under Section 12071 (i.e, the person’s licensed premises might be in California and the person might be on the centralized list of firearms dealers pursuant to Section 12071). Consequently, it is possible that the term “licensed premises,” in paragraph (c)(1), could also be referring to premises designated in a state dealer’s license.

#### *Conclusion*

In all but the last of the provisions relating to federal licenses discussed above, it seems very likely that the term “licensed premises” is referring to the premises designated in the relevant federal license. Therefore, it would be problematic to apply the existing definition of “licensed premises” to those provisions. Doing so would probably change the meaning of the provision in a nonsensical way, by making the term mean the building designated in a *state* dealer’s license.

The same is possibly true of the last provision discussed above, Section 12083(c)(1). However, it is possible that “licensed premises” is used in that provision to also refer to the premises designated in a state dealer’s license. Given the uncertainty on that point, it would be imprudent to impose a fixed definition of the term, which might be incompatible with the intended meaning.

#### RECOMMENDATION

The staff believes that the existing definition of “licensed premises” could be expanded to apply to the sections that use the term to refer to premises designated in a state firearms dealer’s license that is issued pursuant to Section 12071 (i.e., Sections 12035(h), 12036(i), 12072(f)(2)(D)(ii)(IV)).

The definition should probably *not* be applied to use of the term “licensed premises” in the other provisions discussed above, which appear to refer to premises designated in other types of licenses.

If the Commission agrees, the staff will hold this material for eventual incorporation into a tentative recommendation addressing issues of this type.

Respectfully submitted,

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