

AMENDED IN SENATE MAY 16, 2001

AMENDED IN SENATE MAY 2, 2001

SENATE BILL

No. 331

Introduced by Senator Morrow
(Coauthors: Senators Peace and Perata)

February 20, 2001

An act to amend Section 12403.7 of the Penal Code, relating to weapons.

LEGISLATIVE COUNSEL'S DIGEST

SB 331, as amended, Morrow. Weapons: tear gas.

Existing law regulates the purchase, possession, and use of any tear gas or tear gas weapon and prohibits, among other things, the purchase, possession, or use of any tear gas or tear gas weapon that expels the tear gas by any method other than an aerosol spray, as specified.

This bill would ~~include in the methods exempted~~ *exempt* from this prohibition a ~~frangible plastic container that allows for dry powder dispersion under specified conditions~~ *tear gas weapon that meets specified conditions, including, among other things, that the weapon does not use an explosive, as defined, uses a projectile that is a frangible plastic container that allows for dry powder dispersion under specified conditions, and is manufactured with safety mechanisms to prevent unintended discharge by the operator and by a minor under the age of 12 years. The bill would require that the tear gas weapon be used solely for self-defense purposes within the person's place of residence, place of business, or on private property owned or lawfully possessed by the person. This bill would make any person who uses a tear gas weapon that meets these specified conditions except in self-defense guilty of a*

misdemeanor, except if the violation is against a peace officer, as specified, the offense would be punishable by up to one year in a county jail and a fine not to exceed \$2,000.

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

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

1 SECTION 1. Section 12403.7 of the Penal Code is amended
2 to read:

3 12403.7. Notwithstanding any other law, any person may
4 purchase, possess, or use tear gas and tear gas weapons for the
5 projection or release of tear gas if the tear gas and tear gas weapons
6 are used solely for self-defense purposes, subject to the following
7 requirements:

8 (a) No person convicted of a felony or any crime involving an
9 assault under the laws of the United States, the State of California,
10 or any other state, government, or country or convicted of misuse
11 of tear gas under subdivision (g) shall purchase, possess, or use tear
12 gas or tear gas weapons.

13 (b) No person who is addicted to any narcotic drug shall
14 purchase, possess, or use tear gas or tear gas weapons.

15 (c) No person shall sell or furnish any tear gas or tear gas
16 weapon to a minor.

17 (d) No person who is a minor shall purchase, possess, or use
18 tear gas or tear gas weapons.

19 (e) (1) No person shall purchase, possess, or use any tear gas
20 weapon that expels a *projectile, except as provided in paragraph*
21 *(2), or that expels the tear gas by any method other than an aerosol*
22 ~~spray or frangible plastic container allowing for dry powder~~
23 ~~dispersion. The aerosol spray shall contain no more than 2.5~~
24 ~~ounces net weight of aerosol spray. Frangible plastic containers~~
25 ~~that allow for dry powder dispersion shall contain no more than .5~~
26 ~~ounces of dry powder.~~

27 ~~(2) spray, or that contains more than 2.5 ounces net weight of~~
28 ~~aerosol spray.~~

29 (2) A person may purchase, possess, or use a tear gas weapon
30 that expels a projectile subject to all of the following specified
31 conditions:

32 (A) The tear gas weapon is in a color other than black or silver.



1 (B) *The tear gas weapon does not use an explosive, as defined*
2 *in Section 12000 of the Health and Safety Code, to expel the*
3 *projectile.*

4 (C) *The tear gas weapon is designed and manufactured with an*
5 *effective range of no greater than 30 feet.*

6 (D) *The projectile is a frangible plastic container that allows*
7 *for dry powder dispersion that contains no more than .5 ounces of*
8 *dry powder.*

9 (E) *The projectile is not manufactured in a standard paintball*
10 *caliber size and does not have a diameter greater than one-half*
11 *inch.*

12 (F) *The tear gas weapon is manufactured with a safety*
13 *mechanism designed to prevent unintended discharge by the*
14 *operator.*

15 (G) *The tear gas weapon is manufactured with a child safety*
16 *mechanism designed to prevent discharge by a minor under the age*
17 *of 12.*

18 (H) *The tear gas weapon shall be used solely for self-defense*
19 *purposes within the person's place of residence, place of business,*
20 *or on private property owned or lawfully possessed by the person.*

21 (I) *The tear gas weapon shall not be carried by a person*
22 *concealed upon his or her person in public or carried or concealed*
23 *within any vehicle under his or her direction or control, except that*
24 *the tear gas weapon may be carried in a separate container on a*
25 *direct route to or from the person's place of residence, place of*
26 *business, or private property that is owned or lawfully possessed*
27 *by the person for use as allowed by this paragraph.*

28 (J) *Any person who uses a tear gas weapon that expels a*
29 *projectile, as specified in this paragraph, except in self-defense, is*
30 *guilty of a public offense punishable as a misdemeanor, except if*
31 *the use is against a peace officer, as defined in Chapter 4.5*
32 *(commencing with Section 830) of Title 3 of Part 2, engaged in the*
33 *performance of his or her official duties and the person committing*
34 *the offense knows or reasonably should know that the victim is a*
35 *peace officer, the offense is punishable by up to one year in a county*
36 *jail and a fine not to exceed two thousand dollars (\$2,000).*

37 (3) Every tear gas container and tear gas weapon that may be
38 lawfully purchased, possessed, and used pursuant to this section
39 shall have a label that states: "WARNING: The use of this



1 substance or device for any purpose other than self-defense is a
2 crime under the law. The contents are dangerous—use with care.”

3 ~~(3)~~

4 (4) After January 1, 1984, every tear gas container and tear gas
5 weapon that may be lawfully purchased, possessed, and used
6 pursuant to this section shall have a label that discloses the date on
7 which the useful life of the tear gas weapon expires.

8 ~~(4)~~

9 (5) Every tear gas container and tear gas weapon that may be
10 lawfully purchased pursuant to this section shall be accompanied
11 at the time of purchase by printed instructions for use.

12 (f) Effective March 1, 1994, every tear gas container and tear
13 gas weapon that may be lawfully purchased, possessed, and used
14 pursuant to this section shall be accompanied by an insert
15 including directions for use, first aid information, safety and
16 storage information, and explanation of the legal ramifications of
17 improper use of the tear gas container or tear gas product.

18 (g) Any person who uses tear gas or tear gas weapons except in
19 self-defense is guilty of a public offense and is punishable by
20 imprisonment in a state prison for 16 months, or two or three years
21 or in a county jail not to exceed one year or by a fine not to exceed
22 one thousand dollars (\$1,000), or by both the fine and
23 imprisonment, except that, if the use is against a peace officer, as
24 defined in Chapter 4.5 (commencing with Section 830) of Title 3
25 of Part 2, engaged in the performance of his or her official duties
26 and the person committing the offense knows or reasonably should
27 know that the victim is a peace officer, the offense is punishable
28 by imprisonment in a state prison for 16 months or two or three
29 years or by a fine of one thousand dollars (\$1,000), or by both the
30 fine and imprisonment.

