

AMENDED IN ASSEMBLY APRIL 18, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2333

Introduced by Assembly Member Solorio

February 24, 2012

An act to amend Sections 626.10, 16700, and 20150 of, and to add Section 19920 to, the Penal Code, relating to imitation firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2333, as amended, Solorio. BB devices: imitation firearms.

(1) Existing law provides that any person who brings or possesses any instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO₂ pressure, or spring action upon the grounds of, *or within*, any *public or private school providing instruction in kindergarten or any of grades ~~K—12~~ 1 to 12*, inclusive, ~~school~~ is guilty of a public offense, punishable as a misdemeanor or a felony.

This bill would revise these provisions to provide that the public offense is committed by any person who brings or possesses any instrument that expels a projectile, such as a BB or a pellet, not exceeding 6mm caliber, through the force of air pressure, gas pressure, or spring action upon the grounds of ~~any grades K—12, inclusive~~, *or within, that school*. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law defines “BB device” to mean any instrument that expels a projectile, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action, or any spot marker gun. Existing law defines “imitation firearm” to mean any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration

and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm. Existing law provides that a BB device is not an imitation firearm in regard to a provision imposing a civil fine on the sale, manufacture, transportation, receipt, or distribution of imitation firearms for commercial purposes.

~~This bill would clarify the definition of “imitation firearm” to mean a BB device, toy gun, replica of a firearm, or other device that is so substantially similar in overall appearance to an existing firearm, as specified. The bill would recast the definition of BB device for purposes of the exemption from the civil fine described above by including within the exemption a traditional BB, paintball, or pellet-firing air gun that expels a projectile through the force of compressed air, compressed gas, or mechanical spring action, or any combination thereof, and a BB device other than one of those described above that has a blaze orange marking permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel from the muzzle end for a depth of at least 6 millimeters, in compliance with federal law, as specified.~~

(3) Existing law provides that furnishing a BB device to a minor without the express or implied consent of the minor’s parent or legal guardian is a misdemeanor.

This bill would provide that any person who keeps a BB device within any premises that is under the person’s custody or control, who knows or reasonably should know that a minor is likely to gain access to that BB device without the permission of the minor’s parent or legal guardian, and a minor obtains access to that BB device and thereafter carries the BB device off-premises, is subject to specified civil penalties.

(4) Existing law provides that anyone who changes, alters, removes, or obliterates any coloration or markings that are required by state or federal law for any imitation firearm or BB device in a way that makes the imitation firearm or BB device look more like a firearm, is guilty of a misdemeanor.

This bill would clarify that coloration or markings includes any color permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel beginning at the muzzle end.

(5) 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.
State-mandated local program: yes.

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

1 SECTION 1. Section 626.10 of the Penal Code is amended to
2 read:

3 626.10. (a) (1) Any person, except a duly appointed peace
4 officer as defined in Chapter 4.5 (commencing with Section 830)
5 of Title 3 of Part 2, a full-time paid peace officer of another state
6 or the federal government who is carrying out official duties while
7 in this state, a person summoned by any officer to assist in making
8 arrests or preserving the peace while the person is actually engaged
9 in assisting any officer, or a member of the military forces of this
10 state or the United States who is engaged in the performance of
11 his or her duties, who brings or possesses any dirk, dagger, ice
12 pick, knife having a blade longer than 2½ inches, folding knife
13 with a blade that locks into place, razor with an unguarded blade,
14 taser, or stun gun, as defined in subdivision (a) of Section 244.5,
15 any instrument that expels a projectile, such as a BB or a pellet,
16 not exceeding 6mm caliber, through the force of air pressure, gas
17 pressure, or spring action, or any spot marker gun, upon the
18 grounds of, or within, any public or private school providing
19 instruction in kindergarten or any of grades 1 to 12, inclusive, is
20 guilty of a public offense, punishable by imprisonment in a county
21 jail not exceeding one year, or by imprisonment pursuant to
22 subdivision (h) of Section 1170.

23 (2) Any person, except a duly appointed peace officer as defined
24 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
25 2, a full-time paid peace officer of another state or the federal
26 government who is carrying out official duties while in this state,
27 a person summoned by any officer to assist in making arrests or
28 preserving the peace while the person is actually engaged in
29 assisting any officer, or a member of the military forces of this
30 state or the United States who is engaged in the performance of
31 his or her duties, who brings or possesses a razor blade or a box
32 cutter upon the grounds of, or within, any public or private school
33 providing instruction in kindergarten or any of grades 1 to 12,
34 inclusive, is guilty of a public offense, punishable by imprisonment
35 in a county jail not exceeding one year.

1 (b) Any person, except a duly appointed peace officer as defined
2 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
3 2, a full-time paid peace officer of another state or the federal
4 government who is carrying out official duties while in this state,
5 a person summoned by any officer to assist in making arrests or
6 preserving the peace while the person is actually engaged in
7 assisting any officer, or a member of the military forces of this
8 state or the United States who is engaged in the performance of
9 his or her duties, who brings or possesses any dirk, dagger, ice
10 pick, or knife having a fixed blade longer than 2½ inches upon
11 the grounds of, or within, any private university, the University of
12 California, the California State University, or the California
13 Community Colleges is guilty of a public offense, punishable by
14 imprisonment in a county jail not exceeding one year, or by
15 imprisonment pursuant to subdivision (h) of Section 1170.

16 (c) Subdivisions (a) and (b) do not apply to any person who
17 brings or possesses a knife having a blade longer than 2½ inches,
18 a razor with an unguarded blade, a razor blade, or a box cutter
19 upon the grounds of, or within, a public or private school providing
20 instruction in kindergarten or any of grades 1 to 12, inclusive, or
21 any private university, state university, or community college at
22 the direction of a faculty member of the private university, state
23 university, or community college, or a certificated or classified
24 employee of the school for use in a private university, state
25 university, community college, or school-sponsored activity or
26 class.

27 (d) Subdivisions (a) and (b) do not apply to any person who
28 brings or possesses an ice pick, a knife having a blade longer than
29 2½ inches, a razor with an unguarded blade, a razor blade, or a
30 box cutter upon the grounds of, or within, a public or private school
31 providing instruction in kindergarten or any of grades 1 to 12,
32 inclusive, or any private university, state university, or community
33 college for a lawful purpose within the scope of the person's
34 employment.

35 (e) Subdivision (b) does not apply to any person who brings or
36 possesses an ice pick or a knife having a fixed blade longer than
37 2½ inches upon the grounds of, or within, any private university,
38 state university, or community college for lawful use in or around
39 a residence or residential facility located upon those grounds or
40 for lawful use in food preparation or consumption.

1 (f) Subdivision (a) does not apply to any person who brings an
2 instrument that expels a projectile such, as a BB or a pellet, not
3 exceeding 6mm caliber, through the force of air pressure, gas
4 pressure, or spring action, or any spot marker gun, or any razor
5 blade or box cutter upon the grounds of, or within, a public or
6 private school providing instruction in kindergarten or any of
7 grades 1 to 12, inclusive, if the person has the written permission
8 of the school principal or his or her designee.

9 (g) Any certificated or classified employee or school peace
10 officer of a public or private school providing instruction in
11 kindergarten or any of grades 1 to 12, inclusive, may seize any of
12 the weapons described in subdivision (a), and any certificated or
13 classified employee or school peace officer of any private
14 university, state university, or community college may seize any
15 of the weapons described in subdivision (b), from the possession
16 of any person upon the grounds of, or within, the school if he or
17 she knows, or has reasonable cause to know, the person is
18 prohibited from bringing or possessing the weapon upon the
19 grounds of, or within, the school.

20 (h) As used in this section, “dirk” or “dagger” means a knife or
21 other instrument with or without a handguard that is capable of
22 ready use as a stabbing weapon that may inflict great bodily injury
23 or death.

24 (i) Any person who, without the written permission of the
25 college or university president or chancellor or his or her designee,
26 brings or possesses a less lethal weapon, as defined in Section
27 16780, or a stun gun, as defined in Section 17230, upon the grounds
28 of or within, a public or private college or university campus is
29 guilty of a misdemeanor.

30 SEC. 2. Section 16700 of the Penal Code is amended to read:

31 16700. (a) As used in this part, “imitation firearm” means any
32 BB device, toy gun, replica of a firearm, or other device that is so
33 substantially similar in *coloration and overall appearance* to an
34 existing firearm as to lead a reasonable person to perceive that the
35 device is a firearm.

36 (b) As used in Section 20165, “imitation firearm” does not
37 include any of the following:

38 (1) A nonfiring collector’s replica that is historically significant,
39 and is offered for sale in conjunction with a wall plaque or
40 presentation case.

1 (2) A BB device.

2 (3) (A) A traditional BB, paintball, or pellet-firing air gun that
3 expels a projectile through the force of compressed air, compressed
4 gas, or mechanical spring action, or any combination thereof.

5 (B) A BB device that is not described by subparagraph (A) that
6 has a blaze orange marking permanently affixed to the exterior
7 surface of the barrel, covering the circumference of the barrel from
8 the muzzle end for a depth of at least six millimeters in compliance
9 with Section 5001 of Title 15 of the United States Code and Section
10 1150.3(b) of Title 15 of the Code of Federal Regulations.

11 (4) A device where the entire exterior surface of the device is
12 white, bright red, bright orange, bright yellow, bright green, bright
13 blue, bright pink, or bright purple, either singly or as the
14 predominant color in combination with other colors in any pattern,
15 as provided by federal regulations governing imitation firearms,
16 or where the entire device is constructed of transparent or
17 translucent materials which permits unmistakable observation of
18 the device’s complete contents, as provided by federal regulations
19 governing imitation firearms.

20 SEC. 3. Section 19920 is added to the Penal Code, to read:

21 19920. (a) Any person who keeps a BB device within any
22 premises that are under the person’s custody or control, who knows
23 or reasonably should know that a minor is likely to gain access to
24 that BB device without the permission of the minor’s parent or
25 legal guardian, and a minor obtains access to that BB device and
26 thereafter carries the BB device off-premises, is subject to the
27 following:

28 (1) For the first instance, a civil fine not to exceed two hundred
29 fifty dollars (\$250) or be required to successfully complete a course
30 of instruction applicable to BB devices that includes the principles
31 of safe handling and storage, or both the fine and successfully
32 completing the course of instruction.

33 (2) For the second instance, a civil fine not to exceed five
34 hundred dollars (\$500) or be required to successfully complete an
35 advanced course of instruction applicable to BB devices that
36 includes the principles of safe handling and storage, or both the
37 fine and successfully completing the course of instruction.

38 (3) For a third or subsequent instance, a civil fine not to exceed
39 one thousand dollars (\$1,000) or a requirement to perform
40 community service, or both that fine and community service.

1 (b) As used in this section, “off-premises” means premises other
2 than the premises where the BB device was stored.

3 SEC. 4. Section 20150 of the Penal Code is amended to read:

4 20150. (a) Any person who changes, alters, removes, or
5 obliterates any coloration or markings, including any color
6 permanently affixed to the exterior surface of the barrel, covering
7 the circumference of the barrel beginning at the muzzle end, that
8 are required by any applicable state or federal law or regulation,
9 for any imitation firearm, or any device described in subdivision
10 (b) of Section 16700, in a way that makes the imitation firearm or
11 device look more like a firearm, is guilty of a misdemeanor.

12 (b) This section does not apply to a manufacturer, importer, or
13 distributor of imitation firearms.

14 (c) This section does not apply to lawful use in theatrical
15 productions, including motion pictures, television, and stage
16 productions.

17 SEC. 5. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.