

AMENDED IN SENATE JUNE 18, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

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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 *BB devices*.

LEGISLATIVE COUNSEL'S DIGEST

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

~~(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 1 to 12, inclusive, 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, 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 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~~

~~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 and openly displays or exposes the BB device in a public place in violation of provisions of existing law, is subject to a written warning or a requirement to complete a course of instruction applicable to BB devices, or both, for the first instance, a civil fine of \$100 or a requirement to complete a course applicable to BB devices, or both, for the 2nd instance, and a civil fine of \$200 or a requirement to perform community service, or both, for the 3rd or subsequent instance.

Because a violation of a court order issued pursuant to the above provisions would be punishable as contempt, a misdemeanor, this bill would create a new crime and would thereby impose a state-mandated local program.

~~(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~~

~~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 2 ½ 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~~

1 jail not exceeding one year, or by imprisonment pursuant to
2 subdivision (h) of Section 1170.

3 (2) Any person, except a duly appointed peace officer as defined
4 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
5 2, a full-time paid peace officer of another state or the federal
6 government who is carrying out official duties while in this state,
7 a person summoned by any officer to assist in making arrests or
8 preserving the peace while the person is actually engaged in
9 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 a razor blade or a box
12 cutter upon the grounds of, or within, any public or private school
13 providing instruction in kindergarten or any of grades 1 to 12,
14 inclusive, is guilty of a public offense, punishable by imprisonment
15 in a county jail not exceeding one year.

16 (b) Any person, except a duly appointed peace officer as defined
17 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
18 2, a full-time paid peace officer of another state or the federal
19 government who is carrying out official duties while in this state,
20 a person summoned by any officer to assist in making arrests or
21 preserving the peace while the person is actually engaged in
22 assisting any officer, or a member of the military forces of this
23 state or the United States who is engaged in the performance of
24 his or her duties, who brings or possesses any dirk, dagger, ice
25 pick, or knife having a fixed blade longer than 2½ inches upon
26 the grounds of, or within, any private university, the University of
27 California, the California State University, or the California
28 Community Colleges is guilty of a public offense, punishable by
29 imprisonment in a county jail not exceeding one year, or by
30 imprisonment pursuant to subdivision (h) of Section 1170.

31 (c) Subdivisions (a) and (b) do not apply to any person who
32 brings or possesses a knife having a blade longer than 2½ inches,
33 a razor with an unguarded blade, a razor blade, or a box cutter
34 upon the grounds of, or within, a public or private school providing
35 instruction in kindergarten or any of grades 1 to 12, inclusive, or
36 any private university, state university, or community college at
37 the direction of a faculty member of the private university, state
38 university, or community college, or a certificated or classified
39 employee of the school for use in a private university, state

1 ~~university, community college, or school-sponsored activity or~~
2 ~~class.~~

3 ~~(d) Subdivisions (a) and (b) do not apply to any person who~~
4 ~~brings or possesses an ice pick, a knife having a blade longer than~~
5 ~~2½ inches, a razor with an unguarded blade, a razor blade, or a~~
6 ~~box cutter upon the grounds of, or within, a public or private school~~
7 ~~providing instruction in kindergarten or any of grades 1 to 12,~~
8 ~~inclusive, or any private university, state university, or community~~
9 ~~college for a lawful purpose within the scope of the person's~~
10 ~~employment.~~

11 ~~(e) Subdivision (b) does not apply to any person who brings or~~
12 ~~possesses an ice pick or a knife having a fixed blade longer than~~
13 ~~2½ inches upon the grounds of, or within, any private university,~~
14 ~~state university, or community college for lawful use in or around~~
15 ~~a residence or residential facility located upon those grounds or~~
16 ~~for lawful use in food preparation or consumption.~~

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

25 ~~(g) Any certificated or classified employee or school peace~~
26 ~~officer of a public or private school providing instruction in~~
27 ~~kindergarten or any of grades 1 to 12, inclusive, may seize any of~~
28 ~~the weapons described in subdivision (a), and any certificated or~~
29 ~~classified employee or school peace officer of any private~~
30 ~~university, state university, or community college may seize any~~
31 ~~of the weapons described in subdivision (b), from the possession~~
32 ~~of any person upon the grounds of, or within, the school if he or~~
33 ~~she knows, or has reasonable cause to know, the person is~~
34 ~~prohibited from bringing or possessing the weapon upon the~~
35 ~~grounds of, or within, the school.~~

36 ~~(h) As used in this section, "dirk" or "dagger" means a knife or~~
37 ~~other instrument with or without a handguard that is capable of~~
38 ~~ready use as a stabbing weapon that may inflict great bodily injury~~
39 ~~or death.~~

1 ~~(i) Any person who, without the written permission of the~~
 2 ~~college or university president or chancellor or his or her designee,~~
 3 ~~brings or possesses a less lethal weapon, as defined in Section~~
 4 ~~16780, or a stun gun, as defined in Section 17230, upon the grounds~~
 5 ~~of or within, a public or private college or university campus is~~
 6 ~~guilty of a misdemeanor.~~

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

8 ~~16700. (a) As used in this part, “imitation firearm” means any~~
 9 ~~BB device, toy gun, replica of a firearm, or other device that is so~~
 10 ~~substantially similar in coloration and overall appearance to an~~
 11 ~~existing firearm as to lead a reasonable person to perceive that the~~
 12 ~~device is a firearm.~~

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

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

18 ~~(2) A BB device.~~

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

22 ~~(B) A BB device that is not described by subparagraph (A) that~~
 23 ~~has a blaze orange marking permanently affixed to the exterior~~
 24 ~~surface of the barrel, covering the circumference of the barrel from~~
 25 ~~the muzzle end for a depth of at least six millimeters in compliance~~
 26 ~~with Section 5001 of Title 15 of the United States Code and Section~~
 27 ~~1150.3(b) of Title 15 of the Code of Federal Regulations.~~

28 ~~(4) A device where the entire exterior surface of the device is~~
 29 ~~white, bright red, bright orange, bright yellow, bright green, bright~~
 30 ~~blue, bright pink, or bright purple, either singly or as the~~
 31 ~~predominant color in combination with other colors in any pattern,~~
 32 ~~as provided by federal regulations governing imitation firearms;~~
 33 ~~or where the entire device is constructed of transparent or~~
 34 ~~translucent materials which permits unmistakable observation of~~
 35 ~~the device’s complete contents, as provided by federal regulations~~
 36 ~~governing imitation firearms.~~

37 ~~SEC. 3.~~

38 ~~SECTION 1. Section 19920 is added to the Penal Code, to read:~~

39 ~~19920. (a) Any person who keeps a BB device within any~~
 40 ~~premises that are under the person’s custody or control, who knows~~

1 or reasonably should know that a minor is likely to gain access to
2 that BB device without the permission of the minor’s parent or
3 legal guardian, and a minor obtains access to that BB device and
4 thereafter carries the BB device off-premises and openly displays
5 or exposes the BB device in a public place in violation of Section
6 20170, is subject to the following:

7 (1) For the first instance, a written warning or a requirement to
8 successfully complete a course of instruction applicable to BB
9 devices that includes the principles of safe handling and storage,
10 or both the written warning and successfully completing the course
11 of instruction.

12 (2) For the second instance, a civil fine not to exceed one
13 hundred dollars (\$100) or a requirement to successfully complete
14 an advanced course of instruction applicable to BB devices that
15 includes the principles of safe handling and storage, or both the
16 fine and successfully completing the course of instruction.

17 (3) For a third or subsequent instance, a civil fine not to exceed
18 two hundred dollars (\$200) or a requirement to perform community
19 service, or both that fine and community service.

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

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

23 ~~20150. (a) Any person who changes, alters, removes, or~~
24 ~~obliterates any coloration or markings, including any color~~
25 ~~permanently affixed to the exterior surface of the barrel, covering~~
26 ~~the circumference of the barrel beginning at the muzzle end, that~~
27 ~~are required by any applicable state or federal law or regulation,~~
28 ~~for any imitation firearm, or any device described in subdivision~~
29 ~~(b) of Section 16700, in a way that makes the imitation firearm or~~
30 ~~device look more like a firearm, is guilty of a misdemeanor.~~

31 ~~(b) This section does not apply to a manufacturer, importer, or~~
32 ~~distributor of imitation firearms.~~

33 ~~(c) This section does not apply to lawful use in theatrical~~
34 ~~productions, including motion pictures, television, and stage~~
35 ~~productions.~~

36 ~~SEC. 5.~~

37 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
38 ~~Section 6 of Article XIII B of the California Constitution because~~
39 ~~the only costs that may be incurred by a local agency or school~~
40 ~~district will be incurred because this act creates a new crime or~~

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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