

Assembly Bill No. 830

Passed the Assembly August 21, 1995

Chief Clerk of the Assembly

Passed the Senate July 29, 1995

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1995, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Section 49330 of the Education Code, and to amend Sections 171b, 12403, 12403.5, 12403.7, 12403.8, 12423, and 12426 of, and to repeal Sections 12403.6, 12435, and 12460 of, and to repeal Article 5 (commencing with Section 12450) of Chapter 4 of Title 2 of, the Penal Code, relating to tear gas weapons.

LEGISLATIVE COUNSEL'S DIGEST

AB 830, Speier. Tear gas weapons.

(1) Existing law defines “injurious object” in connection with pupil safety as objects specified in certain provisions of law that include weapons such as knives, guns, and explosive substances.

This bill would include in this definition “tear gas” and “tear gas weapon.”

(2) Existing law prohibits the possession of certain weapons, including any tear gas or tear gas weapon, within any state or local public building or at any meeting required by state law to be open to the public.

This bill instead would make this prohibition applicable to any unauthorized tear gas weapon.

(3) Existing law regulates the purchase, possession, transportation, and use of any tear gas or tear gas weapon and makes its provisions applicable to, among others, specified peace officers, licensed private investigators, private patrol operators, employees of specified state agencies, and minors.

This bill would revise and recast these provisions by repealing certain licensing requirements administered by the Department of Justice and other requirements covering oleoresin capsicum certification and the purchase, possession, or use of tear gas or tear gas weapons in which this active ingredient is used. The department would be authorized to issue a permit for the possession and transportation of tear gas or tear gas weapons that are not intended or certified for personal



self-defense purposes, upon proof that good cause exists for the issuance of this permit.

This bill would require that every tear gas container and tear gas weapon that may be lawfully purchased be accompanied at the time of purchase by printed instructions for use.

This bill would also repeal the provision that no tear gas or tear gas weapon shall be possessed, sold, or transported in this state unless the Department of Justice has certified that particular type and brand of tear gas weapon to be acceptable. The bill would make other related, technical and conforming changes.

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

SECTION 1. Section 49330 of the Education Code is amended to read:

49330. As used in this article “injurious object” shall mean those objects specified in Sections 653k, 12001, 12020, 12220, 12401, and 12402 of the Penal Code, and objects capable of inflicting substantial bodily damage, not necessary for the academic purpose of the pupil.

As used in this section, “academic purpose” means any school sponsored activity or class of instruction scheduled during the schoolday.

“Injurious object” does not include any personal possessions or items of apparel which a schoolage child reasonably may be expected either to have in his or her possession or to wear.

SEC. 2. Section 171b of the Penal Code is amended to read:

171b. (a) Any person who brings or possesses within any state or local public building or at any meeting required to be open to the public pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, any of the following is guilty of a public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison:



- (1) Any firearm.
 - (2) Any deadly weapon described in Section 653k or 12020.
 - (3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.
 - (4) Any unauthorized tear gas weapon.
 - (5) Any taser or stun gun, as defined in Section 244.5.
 - (6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO₂ pressure, or spring action, or any spot marker gun or paint gun.
- (b) Subdivision (a) shall not apply to, or affect, any of the following:
- (1) A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence.
 - (2) (A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.
(B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person who brings or possesses any weapon specified therein within any courtroom if he or she is a party to an action pending before the court.
 - (3) A person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.
 - (4) A person who has permission to possess that weapon granted in writing by a duly authorized official who is in charge of the security of the state or local government building.
 - (5) A person who lawfully resides in, lawfully owns, or is in lawful possession of, that building with respect to



those portions of the building that are not owned or leased by the state or local government.

(6) A person licensed or registered in accordance with, and acting within the course and scope of, Chapter 11.5 (commencing with Section 7512) or Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code who has been hired by the owner or manager of the building if the person has permission pursuant to paragraph (5).

(c) As used in this section, “state or local public building” means a building that meets all of the following criteria:

(1) It is a building or part of a building owned or leased by the state or local government, if state or local public employees are regularly present for the purposes of performing their official duties. A state or local public building includes, but is not limited to, a building that contains a courtroom.

(2) It is not a building or facility, or a part thereof, that is referred to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code, or in Section 18544 of the Elections Code.

(3) It is a building not regularly used, and not intended to be used, by state or local employees as a place of residence.

SEC. 3. Section 12403 of the Penal Code is amended to read:

12403. Nothing in this chapter shall prohibit any person who is a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, from purchasing, possessing, transporting, or using any tear gas or tear gas weapon if the person has satisfactorily completed a course of instruction approved by the Commission on Peace Officer Standards and Training in the use of tear gas.

SEC. 4. Section 12403.5 of the Penal Code is amended to read:

12403.5. Notwithstanding any other provision of law, a person holding a license as a private investigator or private patrol operator issued pursuant to Chapter 11 (commencing with Section 7500), Division 3 of the



Business and Professions Code, or uniformed patrolmen employees of a private patrol operator, may purchase, possess, or transport any tear gas weapon, if it is used solely for defensive purposes in the course of the activity for which the license was issued and if the person has satisfactorily completed a course of instruction approved by the Commission on Peace Officer Standards and Training in the use of tear gas.

SEC. 5. Section 12403.6 of the Penal Code is repealed.

SEC. 6. Section 12403.7 of the Penal Code is amended to read:

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

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

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

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

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

(5) (A) No person shall purchase, possess, or use any tear gas weapon that expels a projectile, or that expels the tear gas by any method other than an aerosol spray, or that contains more than 2.5 ounces net weight of aerosol spray.

(B) Every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that states: “WARNING: The use of this substance or device for any purpose other than self-defense is a crime under the law. The contents are dangerous—use with care.”



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

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

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

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

SEC. 7. Section 12403.8 of the Penal Code is amended to read:

12403.8. (a) Notwithstanding paragraph (4) of subdivision (a) of Section 12403.7, a minor who has attained the age of 16 years may purchase and possess tear gas or tear gas weapons pursuant to this chapter if he or she is accompanied by a parent or guardian, or has the written consent of his or her parent or guardian.



(b) Notwithstanding paragraph (3) of subdivision (a) of Section 12403.7, a person may sell or furnish tear gas or a tear gas weapon to a minor who has attained the age of 16 years and who is accompanied by a parent or guardian, or who presents a statement of consent signed by the minor's parent or guardian.

(c) Any civil liability of a minor arising out of his or her use of tear gas or a tear gas weapon other than for self-defense is imposed upon the person, parent, or guardian who signed the statement of consent specified in subdivision (b) who shall be jointly and severally liable with the minor for any damages proximately resulting from the negligent or wrongful act or omission of the minor in the use of the tear gas or a tear gas weapon.

SEC. 8. Section 12423 of the Penal Code is amended to read:

12423. The Department of Justice may issue a permit for the possession and transportation of tear gas or tear gas weapons that are not intended or certified for personal self-defense purposes, upon proof that good cause exists for the issuance thereof to the applicant for this permit. The permit may also allow the applicant to install, maintain, and operate a protective system involving the use of tear gas or tear gas weapons in any place which is accurately and completely described in the application for the permit.

SEC. 9. Section 12426 of the Penal Code is amended to read:

12426. Permits issued in accordance with this article may be revoked or suspended by the issuing authority at any time when it appears that the need for the possession or transportation of the tear gas or tear gas weapons or protective system involving the use thereof, has ceased, or that the holder of the permit has engaged in an unlawful business or occupation or has wrongfully made use of the tear gas or tear gas weapons or the permit issued.

SEC. 10. Section 12435 of the Penal Code is repealed.

SEC. 11. Article 5 (commencing with Section 12450) of Chapter 4 of Title 2 of the Penal Code is repealed.



SEC. 12. Section 12460 of the Penal Code is repealed.



Approved _____, 1995

Governor

