

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 18, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 2333**

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**Introduced by Assembly Member Solorio**

February 24, 2012

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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, CO<sub>2</sub> 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 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 ~~specified civil penalties~~ *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.*

(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 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  
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

1 his or her duties, who brings or possesses a razor blade or a box  
2 cutter upon the grounds of, or within, any public or private school  
3 providing instruction in kindergarten or any of grades 1 to 12,  
4 inclusive, is guilty of a public offense, punishable by imprisonment  
5 in a county jail not exceeding one year.

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

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

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

1 (e) Subdivision (b) does not apply to any person who brings or  
2 possesses an ice pick or a knife having a fixed blade longer than  
3 2 ½ inches upon the grounds of, or within, any private university,  
4 state university, or community college for lawful use in or around  
5 a residence or residential facility located upon those grounds or  
6 for lawful use in food preparation or consumption.

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

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

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

30 (i) Any person who, without the written permission of the  
31 college or university president or chancellor or his or her designee,  
32 brings or possesses a less lethal weapon, as defined in Section  
33 16780, or a stun gun, as defined in Section 17230, upon the grounds  
34 of or within, a public or private college or university campus is  
35 guilty of a misdemeanor.

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

37 16700. (a) As used in this part, “imitation firearm” means any  
38 BB device, toy gun, replica of a firearm, or other device that is so  
39 substantially similar in coloration and overall appearance to an

1 existing firearm as to lead a reasonable person to perceive that the  
2 device is a firearm.

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

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

8 (2) A BB device.

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

12 (B) A BB device that is not described by subparagraph (A) that  
13 has a blaze orange marking permanently affixed to the exterior  
14 surface of the barrel, covering the circumference of the barrel from  
15 the muzzle end for a depth of at least six millimeters in compliance  
16 with Section 5001 of Title 15 of the United States Code and Section  
17 1150.3(b) of Title 15 of the Code of Federal Regulations.

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

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

28 19920. (a) Any person who keeps a BB device within any  
29 premises that are under the person’s custody or control, who knows  
30 or reasonably should know that a minor is likely to gain access to  
31 that BB device without the permission of the minor’s parent or  
32 legal guardian, and a minor obtains access to that BB device and  
33 thereafter carries the BB device off-premises *and openly displays*  
34 *or exposes the BB device in a public place in violation of Section*  
35 *20170*, is subject to the following:

36 (1) For the first instance, a ~~civil fine not to exceed two hundred~~  
37 ~~fifty dollars (\$250)~~ *written warning or be required a requirement*  
38 *to successfully complete a course of instruction applicable to BB*  
39 *devices that includes the principles of safe handling and storage,*

1 or both the ~~fine~~ *written warning* and successfully completing the  
2 course of instruction.

3 (2) For the second instance, a civil fine not to exceed ~~five~~  
4 ~~hundred dollars (\$500)~~ *one hundred dollars (\$100)* or ~~be required~~  
5 *a requirement* to successfully complete an advanced course of  
6 instruction applicable to BB devices that includes the principles  
7 of safe handling and storage, or both the fine and successfully  
8 completing the course of instruction.

9 (3) For a third or subsequent instance, a civil fine not to exceed  
10 ~~one thousand dollars (\$1,000)~~ *two hundred dollars (\$200)* or a  
11 requirement to perform community service, or both that fine and  
12 community service.

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

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

16 20150. (a) Any person who changes, alters, removes, or  
17 obliterates any coloration or markings, including any color  
18 permanently affixed to the exterior surface of the barrel, covering  
19 the circumference of the barrel beginning at the muzzle end, that  
20 are required by any applicable state or federal law or regulation,  
21 for any imitation firearm, or any device described in subdivision  
22 (b) of Section 16700, in a way that makes the imitation firearm or  
23 device look more like a firearm, is guilty of a misdemeanor.

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

26 (c) This section does not apply to lawful use in theatrical  
27 productions, including motion pictures, television, and stage  
28 productions.

29 SEC. 5. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.