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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1732

Introduced by Assembly Member Campos

(Principal coauthor: Senator Alquist)

**(~~Coauthor:~~ Coauthors: Assembly Member Members Alejo and
Halderman)**

February 16, 2012

An act to amend Section 48900 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 1732, as amended, Campos. Pupils: suspension or expulsion: bullying: impersonation.

Existing law prohibits the suspension, or recommendation for expulsion, of a pupil from school unless the school district superintendent or the school principal determines that the pupil has committed any of various specified acts, including, but not limited to, bullying. Existing law defines bullying as any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, which includes, among other things, a post on a social network Internet Web site, and including one or more acts, as specified, committed by a pupil or group of pupils,

directed toward one or more pupils that has or can be reasonably predicted to have one or more specified effects.

This bill would identify specific conduct that would constitute a post on a social network Internet Web site, including posting to or creating a burn page, as defined, creating a credible impersonation of a pupil, as defined and as specified, and creating a false profile, as defined and as specified. The bill also would provide that an electronic act does not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

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 48900 of the Education Code, as amended
2 by Section 6 of Chapter 732 of the Statutes of 2011, is amended
3 to read:

4 48900. A pupil shall not be suspended from school or
5 recommended for expulsion, unless the superintendent or the
6 principal of the school in which the pupil is enrolled determines
7 that the pupil has committed an act as defined pursuant to any of
8 subdivisions (a) to (r), inclusive:

9 (a) (1) Caused, attempted to cause, or threatened to cause
10 physical injury to another person.

11 (2) Willfully used force or violence upon the person of another,
12 except in self-defense.

13 (b) Possessed, sold, or otherwise furnished a firearm, knife,
14 explosive, or other dangerous object, unless, in the case of
15 possession of an object of this type, the pupil had obtained written
16 permission to possess the item from a certificated school employee,
17 which is concurred in by the principal or the designee of the
18 principal.

19 (c) Unlawfully possessed, used, sold, or otherwise furnished,
20 or been under the influence of, a controlled substance listed in
21 Chapter 2 (commencing with Section 11053) of Division 10 of the
22 Health and Safety Code, an alcoholic beverage, or an intoxicant
23 of any kind.

24 (d) Unlawfully offered, arranged, or negotiated to sell a
25 controlled substance listed in Chapter 2 (commencing with Section
26 11053) of Division 10 of the Health and Safety Code, an alcoholic

1 beverage, or an intoxicant of any kind, and either sold, delivered,
2 or otherwise furnished to a person another liquid, substance, or
3 material and represented the liquid, substance, or material as a
4 controlled substance, alcoholic beverage, or intoxicant.

5 (e) Committed or attempted to commit robbery or extortion.

6 (f) Caused or attempted to cause damage to school property or
7 private property.

8 (g) Stole or attempted to steal school property or private
9 property.

10 (h) Possessed or used tobacco, or products containing tobacco
11 or nicotine products, including, but not limited to, cigarettes, cigars,
12 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
13 packets, and betel. However, this section does not prohibit use or
14 possession by a pupil of his or her own prescription products.

15 (i) Committed an obscene act or engaged in habitual profanity
16 or vulgarity.

17 (j) Unlawfully possessed or unlawfully offered, arranged, or
18 negotiated to sell drug paraphernalia, as defined in Section 11014.5
19 of the Health and Safety Code.

20 (k) Disrupted school activities or otherwise willfully defied the
21 valid authority of supervisors, teachers, administrators, school
22 officials, or other school personnel engaged in the performance of
23 their duties.

24 (l) Knowingly received stolen school property or private
25 property.

26 (m) Possessed an imitation firearm. As used in this section,
27 “imitation firearm” means a replica of a firearm that is so
28 substantially similar in physical properties to an existing firearm
29 as to lead a reasonable person to conclude that the replica is a
30 firearm.

31 (n) Committed or attempted to commit a sexual assault as
32 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
33 Code or committed a sexual battery as defined in Section 243.4
34 of the Penal Code.

35 (o) Harassed, threatened, or intimidated a pupil who is a
36 complaining witness or a witness in a school disciplinary
37 proceeding for the purpose of either preventing that pupil from
38 being a witness or retaliating against that pupil for being a witness,
39 or both.

1 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
2 sold the prescription drug Soma.

3 (q) Engaged in, or attempted to engage in, hazing. For purposes
4 of this subdivision, “hazing” means a method of initiation or
5 preinitiation into a pupil organization or body, whether or not the
6 organization or body is officially recognized by an educational
7 institution, which is likely to cause serious bodily injury or personal
8 degradation or disgrace resulting in physical or mental harm to a
9 former, current, or prospective pupil. For purposes of this
10 subdivision, “hazing” does not include athletic events or
11 school-sanctioned events.

12 (r) Engaged in an act of bullying. For purposes of this
13 subdivision, the following terms have the following meanings:

14 (1) “Bullying” means any severe or pervasive physical or verbal
15 act or conduct, including communications made in writing or by
16 means of an electronic act, and including one or more acts
17 committed by a pupil or group of pupils as defined in Section
18 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
19 that has or can be reasonably predicted to have the effect of one
20 or more of the following:

21 (A) Placing a reasonable pupil or pupils in fear of harm to that
22 pupil’s or those pupils’ person or property.

23 (B) Causing a reasonable pupil to experience a substantially
24 detrimental effect on his or her physical or mental health.

25 (C) Causing a reasonable pupil to experience substantial
26 interference with his or her academic performance.

27 (D) Causing a reasonable pupil to experience substantial
28 interference with his or her ability to participate in or benefit from
29 the services, activities, or privileges provided by a school.

30 (2) (A) “Electronic act” means the transmission, by means of
31 an electronic device, including, but not limited to, a telephone,
32 wireless telephone, or other wireless communication device,
33 computer, or pager, of a communication, including, but not limited
34 to, any of the following:

35 (i) A message, text, sound, or image.

36 (ii) A post on a social network Internet Web site, including, but
37 not limited to:

38 (I) Posting to or creating a burn page. “Burn page” means an
39 Internet Web site created for the purpose of having one or more
40 of the effects listed in paragraph (1).

1 (II) Creating a credible impersonation of another actual pupil
2 for the purpose of having one or more of the effects listed in
3 paragraph (1). “Credible impersonation” means to knowingly and
4 without consent impersonate a pupil for the purpose of bullying
5 the pupil and such that another pupil would reasonably believe, or
6 has reasonably believed, that the pupil was or is the pupil who was
7 impersonated.

8 (III) Creating a false profile for the purpose of having one or
9 more of the effects listed in paragraph (1). “False profile” means
10 a profile of a fictitious pupil or a profile using the likeness or
11 attributes of an actual pupil other than the pupil who created the
12 false profile.

13 (B) Notwithstanding paragraph (1) and subparagraph (A), an
14 electronic act shall not constitute pervasive conduct solely on the
15 basis that it has been transmitted on the Internet or is currently
16 posted on the Internet.

17 (3) “Reasonable pupil” means a pupil, including, but not limited
18 to, an exceptional needs pupil, who exercises average care, skill,
19 and judgment in conduct for a person of his or her age, or for a
20 person of his or her age with his or her exceptional needs.

21 (s) A pupil shall not be suspended or expelled for any of the
22 acts enumerated in this section; unless the act is related to school
23 activity or school attendance occurring within a school under the
24 jurisdiction of the superintendent of the school district or principal
25 or occurring within any other school district. A pupil may be
26 suspended or expelled for acts that are enumerated in this section
27 and related to school activity or school attendance that occur at
28 any time, including, but not limited to, any of the following:

29 (1) While on school grounds.

30 (2) While going to or coming from school.

31 (3) During the lunch period whether on or off the campus.

32 (4) During, or while going to or coming from, a
33 school-sponsored activity.

34 (t) A pupil who aids or abets, as defined in Section 31 of the
35 Penal Code, the infliction or attempted infliction of physical injury
36 to another person may be subject to suspension, but not expulsion,
37 pursuant to this section, except that a pupil who has been adjudged
38 by a juvenile court to have committed, as an aider and abettor, a
39 crime of physical violence in which the victim suffered great bodily

1 injury or serious bodily injury shall be subject to discipline pursuant
2 to subdivision (a).

3 (u) As used in this section, “school property” includes, but is
4 not limited to, electronic files and databases.

5 (v) A superintendent of the school district or principal may use
6 his or her discretion to provide alternatives to suspension or
7 expulsion, including, but not limited to, counseling and an anger
8 management program, for a pupil subject to discipline under this
9 section.

10 (w) It is the intent of the Legislature that alternatives to
11 suspension or expulsion be imposed against a pupil who is truant,
12 tardy, or otherwise absent from school activities.