

AMENDED IN ASSEMBLY APRIL 11, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 231

Introduced by Assembly Members Ting and Gomez

February 5, 2013

An act to amend *Section 1714.1 of, and to repeal Section 1714.3 of, the Civil Code, and to amend Sections 25100 and 25110 of, and to repeal and add Section 25105 of 25107 to, the Penal Code, relating to firearms.*

LEGISLATIVE COUNSEL'S DIGEST

AB 231, as amended, Ting. Firearms: criminal storage.

Existing law establishes civil liability for any injury to the person or property of another proximately caused by the discharge of a firearm by a minor under 18 years of age and imputes that liability to a parent or guardian having custody and control of the minor for all purposes of civil damages. Existing law provides that the parent or guardian is jointly and severally liable with the minor for any damages resulting from that act, if the parent or guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor. Existing law provides that the liability imposed is in addition to any liability otherwise imposed by law and that no person, or group of persons collectively, shall incur liability under those provisions in any amount exceeding \$30,000 for injury to or death of one person as a result of any one occurrence or, subject to the limit as to one person, exceeding \$60,000 for injury to or death of all persons as a result of any one occurrence. Existing law authorizes imputing liability to a

parent or guardian for specified conduct of a minor, as specified, and provides that an insurer shall not be liable for certain conduct by a minor imputed to a parent or guardian for any amount in excess of \$10,000.

This bill would revise and recast these provisions to remove the dollar limitations in those liability provisions as to the parent or guardian. The bill would extend the liability limitations as to the insurer for liability arising out of the discharge of a firearm by a minor, as specified. The bill would make additional technical, nonsubstantive changes.

Existing law establishes the offenses of criminal storage of a firearm in the first degree when a child obtains access to a person's loaded firearm resulting in death or great bodily injury, as specified, and criminal storage of a firearm in the 2nd degree, where the child obtains access to the firearm resulting in injury other than great bodily injury or the firearm is carried off premises, as specified. Existing law provides several exceptions to these offenses, including, among others, when a child obtains the firearm as a result of illegal entry to the premises, when the firearm is locked with a locking device, or when a child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person. Existing law makes the first degree offense punishable as a felony or misdemeanor with specified penalties and makes the 2nd degree offense punishable as a misdemeanor with specified penalties.

~~This bill would recast those offenses to make it a crime for~~ *establish the offense of criminal storage of a firearm in the 3rd degree when a person to keep keeps a loaded firearm within any premises under his or her custody or control and a child obtains access to a person's loaded firearm, as specified, and would not require that the firearm be carried off premises or result in any injury or death. The only exception to the offense would be when a child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person: negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm, unless reasonable action is taken by the person to secure the firearm against access by the child.* The bill would make the offense punishable as a felony or a misdemeanor with specified penalties. *The bill would also provide that "child" for all degrees of criminal storage of a firearm means an individual who is 14 years of age or younger.* The bill would make a person who owns a firearm

strictly *civilly* liable for each incidence of property damage, bodily injury, or death resulting from the use of his or her firearm. This bill would provide that strict liability does not apply if the owner of the firearm has reported his or her firearm to local law enforcement as ~~lost or stolen prior to the damage, injury, or death.~~ ~~By expanding the definition of a crime and imposing additional duties as local prosecutors creating a new crime,~~ the bill would impose a state-mandated local program.

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 1714.1 of the Civil Code is amended to
2 read:

3 1714.1. (a) Any act of willful misconduct of a minor that
4 results in injury or death to another person or in any injury to the
5 property of another shall be imputed to the parent or guardian
6 having custody and control of the minor for all purposes of civil
7 damages, and the parent or guardian having custody and control
8 shall be jointly and severally liable with the minor for any damages
9 resulting from the willful misconduct.

10 Subject to the provisions of subdivision (c), the joint and several
11 liability of the parent or guardian having custody and control of a
12 minor under this subdivision shall not exceed twenty-five thousand
13 dollars (\$25,000) for each tort of the minor, and in the case of
14 injury to a person, imputed liability shall be further limited to
15 medical, dental and hospital expenses incurred by the injured
16 person, not to exceed twenty-five thousand dollars (\$25,000). The
17 liability imposed by this section is in addition to any liability now
18 imposed by law.

19 (b) Any act of willful misconduct of a minor that results in the
20 defacement of property of another with paint or a similar substance
21 shall be imputed to the parent or guardian having custody and
22 control of the minor for all purposes of civil damages, including

1 court costs, and attorney's fees, to the prevailing party, and the
2 parent or guardian having custody and control shall be jointly and
3 severally liable with the minor for any damages resulting from the
4 willful misconduct, not to exceed twenty-five thousand dollars
5 (\$25,000), except as provided in subdivision (c), for each tort of
6 the minor.

7 (c) The amounts listed in subdivisions (a) and (b) shall be
8 adjusted every two years by the Judicial Council to reflect any
9 increases in the cost of living in California, as indicated by the
10 annual average of the California Consumer Price Index. The
11 Judicial Council shall round this adjusted amount up or down to
12 the nearest hundred dollars. On or before July 1 of each
13 odd-numbered year, the Judicial Council shall compute and publish
14 the amounts listed in subdivisions (a) and (b), as adjusted according
15 to this subdivision.

16 (d) *Civil liability for any injury to the person or property of*
17 *another proximately caused by the discharge of a firearm by a*
18 *minor under 18 years of age shall be imputed to a parent or*
19 *guardian having custody and control of the minor for all purposes*
20 *of civil damages, and that parent or guardian shall be jointly and*
21 *severally liable with the minor for any damages resulting from the*
22 *act, if the parent or guardian either permitted the minor to have*
23 *the firearm or left the firearm in a place accessible to the minor.*
24 *The liability imposed by this section is in addition to any liability*
25 *otherwise imposed by law.*

26 (d)

27 (e) The maximum liability imposed by this section is the
28 maximum liability authorized under this section at the time that
29 the act of willful misconduct by a minor was committed.

30 (e)

31 (f) Nothing in this section shall impose liability on an insurer
32 for a loss caused by the willful act of the insured for purposes of
33 Section 533 of the Insurance Code. An insurer shall not be liable
34 for the conduct imputed to a parent or guardian by this section for
35 any amount in excess of ten thousand dollars (\$10,000).

36 SEC. 2. *Section 1714.3 of the Civil Code is repealed.*

37 ~~1714.3. Civil liability for any injury to the person or property~~
38 ~~of another proximately caused by the discharge of a firearm by a~~
39 ~~minor under the age of 18 years shall be imputed to a parent or~~
40 ~~guardian having custody and control of the minor for all purposes~~

1 of civil damages, and such parent or guardian shall be jointly and
2 severally liable with such minor for any damages resulting from
3 such act, if such parent or guardian either permitted the minor to
4 have the firearm or left the firearm in a place accessible to the
5 minor.

6 The liability imposed by this section is in addition to any liability
7 otherwise imposed by law. However, no person, or group of
8 persons collectively, shall incur liability under this section in any
9 amount exceeding thirty thousand dollars (\$30,000) for injury to
10 or death of one person as a result of any one occurrence or, subject
11 to the limit as to one person, exceeding sixty thousand dollars
12 (\$60,000) for injury to or death of all persons as a result of any
13 one such occurrence.

14 *SEC. 3. Section 25100 of the Penal Code is amended to read:*

15 25100. (a) Except as provided in Section 25105, a person
16 commits the crime of “criminal storage of a firearm of *in* the first
17 degree” if all of the following conditions are satisfied:

18 (1) The person keeps any loaded firearm within any premises
19 that are under the person’s custody or control.

20 (2) The person knows or reasonably should know that a child
21 is likely to gain access to the firearm without the permission of
22 the child’s parent or legal guardian.

23 (3) The child obtains access to the firearm and thereby causes
24 death or great bodily injury to the child or any other person.

25 (b) Except as provided in Section 25105, a person commits the
26 crime of “criminal storage of a firearm of *in* the second degree”
27 if all of the following conditions are satisfied:

28 (1) The person keeps any loaded firearm within any premises
29 that are under the person’s custody or control.

30 (2) The person knows or reasonably should know that a child
31 is likely to gain access to the firearm without the permission of
32 the child’s parent or legal guardian.

33 (3) The child obtains access to the firearm and thereby causes
34 injury, other than great bodily injury, to the child or any other
35 person, or carries the firearm either to a public place or in violation
36 of Section 417.

37 (c) *Except as provided in Section 25105, a person commits the*
38 *crime of “criminal storage of a firearm in the third degree” if the*
39 *person keeps any loaded firearm within any premises that are*
40 *under the person’s custody or control and negligently stores or*

1 *leaves a loaded firearm in a location where the person knows, or*
2 *reasonably should know, that a child is likely to gain access to the*
3 *firearm, unless reasonable action is taken by the person to secure*
4 *the firearm against access by the child.*

5 *(d) For purposes of this chapter, “child” means an individual*
6 *who is 14 years of age or younger.*

7 *SEC. 4. Section 25107 is added to the Penal Code, to read:*

8 *25107. (a) A person who owns a firearm is strictly civilly liable*
9 *for each incidence of property damage, bodily injury, or death*
10 *resulting from the use of his or her firearm.*

11 *(b) This section does not apply if the owner of the firearm*
12 *reported the firearm to local law enforcement as stolen prior to*
13 *the damage, injury, or death.*

14 *SEC. 5. Section 25110 of the Penal Code is amended to read:*

15 *25110. (a) Criminal storage of a firearm in the first degree is*
16 *punishable by imprisonment pursuant to subdivision (h) of Section*
17 *1170 for 16 months, or two or three years, by a fine not exceeding*
18 *ten thousand dollars (\$10,000), or by both that imprisonment and*
19 *fine; or by imprisonment in a county jail not exceeding one year,*
20 *by a fine not exceeding one thousand dollars (\$1,000), or by both*
21 *that imprisonment and fine.*

22 *(b) Criminal storage of a firearm in the second degree is*
23 *punishable by imprisonment in a county jail not exceeding one*
24 *year, by a fine not exceeding one thousand dollars (\$1,000), or by*
25 *both that imprisonment and fine.*

26 *(c) Criminal storage of a firearm in the third degree is*
27 *punishable as a misdemeanor.*

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

37 ~~SECTION 1. Section 25100 of the Penal Code is amended to~~
38 ~~read:~~

39 ~~25100. (a) A person commits the crime of “criminal storage~~
40 ~~of a firearm” if all of the following conditions are satisfied:~~

1 ~~(1) The person keeps any loaded firearm within any premises~~
2 ~~that are under the person's custody or control.~~

3 ~~(2) Regardless of whether the person knows or reasonably~~
4 ~~should know that a child is likely to gain access to the firearm~~
5 ~~without the permission of the child's parent or legal guardian, a~~
6 ~~child does obtain access to the firearm without permission of the~~
7 ~~child's parent or legal guardian.~~

8 ~~(b) This section does not apply when the child obtains, or obtains~~
9 ~~and discharges, the firearm in a lawful act of self-defense or~~
10 ~~defense of another person.~~

11 ~~SEC. 2. Section 25105 of the Penal Code is repealed.~~

12 ~~SEC. 3. Section 25105 is added to the Penal Code, to read:~~

13 ~~25105. (a) A person who owns a firearm shall be strictly liable~~
14 ~~for each incidence of property damage, bodily injury, or death~~
15 ~~resulting from the use of his or her firearm.~~

16 ~~(b) This section does not apply if the owner of the firearm~~
17 ~~reports the firearm to local law enforcement as lost or stolen.~~

18 ~~SEC. 4. Section 25110 of the Penal Code is amended to read:~~

19 ~~25110. Criminal storage of a firearm is punishable by~~
20 ~~imprisonment pursuant to subdivision (h) of Section 1170 for 16~~
21 ~~months, or two or three years, by a fine not exceeding ten thousand~~
22 ~~dollars (\$10,000), or by both that imprisonment and fine; or by~~
23 ~~imprisonment in a county jail not exceeding one year, by a fine~~
24 ~~not exceeding one thousand dollars (\$1,000), or by both that~~
25 ~~imprisonment and fine.~~

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