

AMENDED IN ASSEMBLY APRIL 18, 2013

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 add Section 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~~. *guardian, if the parent or guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor.* The bill would ~~extend~~ *provide that the liability limitations \$10,000 limitation* as to the insurer for liability arising out of the discharge of a firearm by a minor, ~~as specified~~ *also apply under those circumstances.* 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 establish the offense of criminal storage of a firearm in the 3rd degree when a person keeps a loaded firearm within any premises under his or her custody or control and 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 misdemeanor. 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~~

~~stolen prior to the damage, injury, or death.~~ By 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
23 court costs, and attorney’s fees, to the prevailing party, and the
24 parent or guardian having custody and control shall be jointly and
25 severally liable with the minor for any damages resulting from the
26 willful misconduct, not to exceed twenty-five thousand dollars
27 (\$25,000), except as provided in subdivision (c), for each tort of
28 the minor.

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

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

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

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

28 SEC. 2. Section 1714.3 of the Civil Code is repealed.

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

30 25100. (a) Except as provided in Section 25105, a person
 31 commits the crime of “criminal storage of a firearm in the first
 32 degree” if all of the following conditions are satisfied:

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

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

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

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

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

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

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

13 (c) Except as provided in Section 25105, a person commits the
14 crime of “criminal storage of a firearm in the third degree” if the
15 person keeps any loaded firearm within any premises that are under
16 the person’s custody or control and negligently stores or leaves a
17 loaded firearm in a location where the person knows, or reasonably
18 should know, that a child is likely to gain access to the firearm,
19 unless reasonable action is taken by the person to secure the firearm
20 against access by the child.

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

23 ~~SEC. 4. Section 25107 is added to the Penal Code, to read:~~

24 ~~25107. (a) A person who owns a firearm is strictly civilly~~
25 ~~liable for each incidence of property damage, bodily injury, or~~
26 ~~death resulting from the use of his or her firearm.~~

27 ~~(b) This section does not apply if the owner of the firearm~~
28 ~~reported the firearm to local law enforcement as stolen prior to the~~
29 ~~damage, injury, or death.~~

30 ~~SEC. 5.~~

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

32 ~~25110. (a) Criminal storage of a firearm in the first degree is~~
33 ~~punishable by imprisonment pursuant to subdivision (h) of Section~~
34 ~~1170 for 16 months, or two or three years, by a fine not exceeding~~
35 ~~ten thousand dollars (\$10,000), or by both that imprisonment and~~
36 ~~fine; or by imprisonment in a county jail not exceeding one year,~~
37 ~~by a fine not exceeding one thousand dollars (\$1,000), or by both~~
38 ~~that imprisonment and fine.~~

39 ~~(b) Criminal storage of a firearm in the second degree is~~
40 ~~punishable by imprisonment in a county jail not exceeding one~~

1 year, by a fine not exceeding one thousand dollars (\$1,000), or by
2 both that imprisonment and fine.

3 (c) Criminal storage of a firearm in the third degree is punishable
4 as a misdemeanor.

5 ~~SEC. 6.~~

6 *SEC. 5.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.