

ASSEMBLY BILL

No. 2212

**Introduced by Assembly Member Harper
(Coauthor: Assembly Member Lackey)**

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, as introduced, Harper. Pupils: suspensions and expulsions: electronic acts.

Existing law prohibits the suspension, or recommendation for expulsion, of a pupil from school unless the superintendent of the school district or the principal of the school determines that the pupil has committed any of various specified acts, including, but not limited to, engaging in an act of bullying by means of an electronic act. Existing law defines "electronic act" as the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, a message, text, sound, or image, or a post on a social network internet Web site.

This bill would expressly include a video, including, but not limited to, a video or image of two or more pupils fighting that is posted to the Internet, within the definition of what constitutes an electronic act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

SECTION 1. Section 48900 of the Education Code is amended to read:

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

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

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

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

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

(d) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

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

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

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

(h) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew

1 packets, and betel. However, this section does not prohibit the use
2 or possession by a pupil of his or her own prescription products.

3 (i) Committed an obscene act or engaged in habitual profanity
4 or vulgarity.

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

8 (k) (1) Disrupted school activities or otherwise willfully defied
9 the valid authority of supervisors, teachers, administrators, school
10 officials, or other school personnel engaged in the performance of
11 their duties.

12 (2) Except as provided in Section 48910, a pupil enrolled in
13 kindergarten or any of grades 1 to 3, inclusive, shall not be
14 suspended for any of the acts enumerated in this subdivision, and
15 this subdivision shall not constitute grounds for a pupil enrolled
16 in kindergarten or any of grades 1 to 12, inclusive, to be
17 recommended for expulsion. This paragraph shall become
18 inoperative on July 1, 2018, unless a later enacted statute that
19 becomes operative before July 1, 2018, deletes or extends that
20 date.

21 (l) Knowingly received stolen school property or private
22 property.

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

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

32 (o) Harassed, threatened, or intimidated a pupil who is a
33 complaining witness or a witness in a school disciplinary
34 proceeding for purposes of either preventing that pupil from being
35 a witness or retaliating against that pupil for being a witness, or
36 both.

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

39 (q) Engaged in, or attempted to engage in, hazing. For purposes
40 of this subdivision, “hazing” means a method of initiation or

1 preinitiation into a pupil organization or body, whether or not the
2 organization or body is officially recognized by an educational
3 institution, that is likely to cause serious bodily injury or personal
4 degradation or disgrace resulting in physical or mental harm to a
5 former, current, or prospective pupil. For purposes of this
6 subdivision, “hazing” does not include athletic events or
7 school-sanctioned events.

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

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

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

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

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

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

26 (2) (A) “Electronic act” means the creation or transmission
27 originated on or off the schoolsite, by means of an electronic
28 device, including, but not limited to, a telephone, wireless
29 telephone, or other wireless communication device, computer, or
30 pager, of a communication, including, but not limited to, any of
31 the following:

32 (i) A message, text, sound, ~~or image~~, *video, or image, including,*
33 *but not limited to, a video or image of two or more pupils fighting*
34 *that is posted to the Internet.*

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

37 (I) Posting to or creating a burn page. “Burn page” means an
38 Internet Web site created for the purpose of having one or more
39 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 a 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 a 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) For a pupil subject to discipline under this section, a
6 superintendent of the school district or principal may use his or
7 her discretion to provide alternatives to suspension or expulsion
8 that are age appropriate and designed to address and correct the
9 pupil’s specific misbehavior as specified in Section 48900.5.

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.