

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 26, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2536

Introduced by Assembly Member Chau

February 19, 2016

An act to amend Sections 234.2 *and* 48900 ~~and 51934~~ of the Education Code, relating to elementary and secondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2536, as amended, Chau. Pupil discipline and ~~instruction: sexting; safety: sexual bullying.~~

(1) Existing law prohibits the suspension of a pupil from school or the recommendation of a pupil for expulsion from school unless the school district superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed any of several specified acts, including, but not limited to, engaging in acts of bullying by means of an electronic act.

This bill would include engaging in an act of ~~sexting; sexual bullying~~, as defined, as an act of bullying by means of an electronic act for which a pupil may be suspended or expelled from school.

~~(2) Existing law, the California Healthy Youth Act, requires school districts to ensure that all pupils in grades 7 to 12, inclusive, receive comprehensive sexual health education and HIV prevention education, as specified. Under the act, this instruction includes, among other things, information about sexual harassment, sexual assault, adolescent relationship abuse, intimate partner violence, and sex trafficking.~~

~~This bill would require this instruction to additionally include information about sexting, as defined, as specified. By imposing additional duties on school districts, this bill would impose a state-mandated local program.~~

~~(3) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions:~~

~~(2) Existing law requires the State Department of Education to display current information, and periodically update information, on curricula and other resources that specifically address bias-related discrimination, harassment, intimidation, and bullying based on certain actual or perceived characteristics on the California Healthy Kids Resource Center Internet Web site and other appropriate department Internet Web sites where information about discrimination, harassment, intimidation, and bullying is posted.~~

~~This bill would add sexual bullying to this list of topics the department would be required to provide information on.~~

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

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

1 SECTION 1. ~~(a) The Legislature finds and declares all of the~~
2 ~~following:~~

3 ~~(1) The issue of sexting, the sending of sexually explicit~~
4 ~~photographs, videos, or messages via cell phone or instant~~
5 ~~messenger, is an increasingly prevalent issue among teenagers.~~

6 ~~(2) According to the American Academy of Pediatrics, 20~~
7 ~~percent of teenage boys and girls have sent a sext message.~~

8 ~~(3) Sexting has serious legal and social consequences for pupils~~
9 ~~who engage in it.~~

10 ~~(4) Schools across the country have been suspending pupils for~~
11 ~~sexting.~~

12 ~~(5) Section 48900.5 of the Education Code provides that~~
13 ~~suspension shall be imposed only when other means of correction~~
14 ~~fail to bring about proper conduct.~~

1 ~~(b) It is the intent of the Legislature that a suspension or~~
2 ~~expulsion for sexting under the amendments of this act to Section~~
3 ~~48900 of the Education Code only occurs after school~~
4 ~~administrators first use other means of correction outlined in~~
5 ~~Section 48900.5 of the Education Code.~~

6 *SECTION 1. Section 234.2 of the Education Code is amended*
7 *to read:*

8 234.2. The department shall display current information, and
9 periodically update information, on curricula and other resources
10 that specifically address bias-related discrimination, harassment,
11 intimidation, *sexual bullying*, as defined in Section 48900, and
12 bullying based on any of the actual or perceived characteristics set
13 forth in Section 422.55 of the Penal Code and Section 220 on the
14 California Healthy Kids Resource Center Internet Web site and
15 other appropriate department Internet Web sites where information
16 about discrimination, harassment, intimidation, *sexual bullying*,
17 and bullying is posted.

18 SEC. 2. Section 48900 of the Education Code is amended to
19 read:

20 48900. A pupil shall not be suspended from school or
21 recommended for expulsion, unless the superintendent of the school
22 district or the principal of the school in which the pupil is enrolled
23 determines that the pupil has committed an act as defined pursuant
24 to any of subdivisions (a) to (r), inclusive:

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

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

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

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

- 1 (d) Unlawfully offered, arranged, or negotiated to sell a
2 controlled substance listed in Chapter 2 (commencing with Section
3 11053) of Division 10 of the Health and Safety Code, an alcoholic
4 beverage, or an intoxicant of any kind, and either sold, delivered,
5 or otherwise furnished to a person another liquid, substance, or
6 material and represented the liquid, substance, or material as a
7 controlled substance, alcoholic beverage, or intoxicant.
- 8 (e) Committed or attempted to commit robbery or extortion.
- 9 (f) Caused or attempted to cause damage to school property or
10 private property.
- 11 (g) Stole or attempted to steal school property or private
12 property.
- 13 (h) Possessed or used tobacco, or products containing tobacco
14 or nicotine products, including, but not limited to, cigarettes, cigars,
15 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
16 packets, and betel. However, this section does not prohibit the use
17 or possession by a pupil of his or her own prescription products.
- 18 (i) Committed an obscene act or engaged in habitual profanity
19 or vulgarity.
- 20 (j) Unlawfully possessed or unlawfully offered, arranged, or
21 negotiated to sell drug paraphernalia, as defined in Section 11014.5
22 of the Health and Safety Code.
- 23 (k) (1) Disrupted school activities or otherwise willfully defied
24 the valid authority of supervisors, teachers, administrators, school
25 officials, or other school personnel engaged in the performance of
26 their duties.
- 27 (2) Except as provided in Section 48910, a pupil enrolled in
28 kindergarten or any of grades 1 to 3, inclusive, shall not be
29 suspended for any of the acts enumerated in this subdivision, and
30 this subdivision shall not constitute grounds for a pupil enrolled
31 in kindergarten or any of grades 1 to 12, inclusive, to be
32 recommended for expulsion. This paragraph shall become
33 inoperative on July 1, 2018, unless a later enacted statute that
34 becomes operative before July 1, 2018, deletes or extends that
35 date.
- 36 (l) Knowingly received stolen school property or private
37 property.
- 38 (m) Possessed an imitation firearm. As used in this section,
39 “imitation firearm” means a replica of a firearm that is so
40 substantially similar in physical properties to an existing firearm

1 as to lead a reasonable person to conclude that the replica is a
2 firearm.

3 (n) Committed or attempted to commit a sexual assault as
4 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
5 Code or committed a sexual battery as defined in Section 243.4
6 of the Penal Code.

7 (o) Harassed, threatened, or intimidated a pupil who is a
8 complaining witness or a witness in a school disciplinary
9 proceeding for purposes of either preventing that pupil from being
10 a witness or retaliating against that pupil for being a witness, or
11 both.

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

14 (q) Engaged in, or attempted to engage in, hazing. For purposes
15 of this subdivision, “hazing” means a method of initiation or
16 preinitiation into a pupil organization or body, whether or not the
17 organization or body is officially recognized by an educational
18 institution, that is likely to cause serious bodily injury or personal
19 degradation or disgrace resulting in physical or mental harm to a
20 former, current, or prospective pupil. For purposes of this
21 subdivision, “hazing” does not include athletic events or
22 school-sanctioned events.

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

25 (1) “Bullying” means any severe or pervasive physical or verbal
26 act or conduct, including communications made in writing or by
27 means of an electronic act, and including one or more acts
28 committed by a pupil or group of pupils as defined in Section
29 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
30 that has or can be reasonably predicted to have the effect of one
31 or more of the following:

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

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

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

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

1 (2) (A) “Electronic act” means the creation or transmission
 2 originated on or off the schoolsite, by means of an electronic
 3 device, including, but not limited to, a telephone, wireless
 4 telephone, or other wireless communication device, computer, or
 5 pager, of a communication, including, but not limited to, any of
 6 the following:

7 (i) A message, text, sound, or image.
 8 (ii) A post on a social network Internet Web site, including, but
 9 not limited to:

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

13 (II) Creating a credible impersonation of another actual pupil
 14 for the purpose of having one or more of the effects listed in
 15 paragraph (1). “Credible impersonation” means to knowingly and
 16 without consent impersonate a pupil for the purpose of bullying
 17 the pupil and such that another pupil would reasonably believe, or
 18 has reasonably believed, that the pupil was or is the pupil who was
 19 impersonated.

20 (III) Creating a false profile for the purpose of having one or
 21 more of the effects listed in paragraph (1). “False profile” means
 22 a profile of a fictitious pupil or a profile using the likeness or
 23 attributes of an actual pupil other than the pupil who created the
 24 false profile.

25 (iii) An act of ~~sexting~~, *sexual bullying*.

26 (I) For purposes of this clause, ~~“sexting”~~ “*sexual bullying*”
 27 means the dissemination of, or the solicitation or incitement to
 28 disseminate, a photograph or other visual recording by a pupil to
 29 another pupil or to school personnel by means of an electronic act
 30 with the purpose or effect of humiliating or harassing a pupil. A
 31 photograph or other visual recording, as described above, shall
 32 include the depiction of a nude, semi-nude, or sexually explicit
 33 photograph or other visual recording of a minor where the minor
 34 is identifiable from the photograph, visual recording, or other
 35 electronic act.

36 (II) For purposes of this clause, ~~“sexting”~~ “*sexual bullying*”
 37 does not include a depiction, portrayal, or image that has any
 38 serious literary, artistic, educational, political, or scientific value
 39 or that involves athletic events or school-sanctioned activities.

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

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

9 (s) A pupil shall not be suspended or expelled for any of the
10 acts enumerated in this section unless the act is related to a school
11 activity or school attendance occurring within a school under the
12 jurisdiction of the superintendent of the school district or principal
13 or occurring within any other school district. A pupil may be
14 suspended or expelled for acts that are enumerated in this section
15 and related to a school activity or school attendance that occur at
16 any time, including, but not limited to, any of the following:

17 (1) While on school grounds.

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

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

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

22 (t) A pupil who aids or abets, as defined in Section 31 of the
23 Penal Code, the infliction or attempted infliction of physical injury
24 to another person may be subject to suspension, but not expulsion,
25 pursuant to this section, except that a pupil who has been adjudged
26 by a juvenile court to have committed, as an aider and abettor, a
27 crime of physical violence in which the victim suffered great bodily
28 injury or serious bodily injury shall be subject to discipline pursuant
29 to subdivision (a).

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

32 (v) For a pupil subject to discipline under this section, a
33 superintendent of the school district or principal may use his or
34 her discretion to provide alternatives to suspension or expulsion
35 that are age appropriate and designed to address and correct the
36 pupil’s specific misbehavior as specified in Section 48900.5.

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

1 ~~SEC. 3.~~ Section 51934 of the Education Code is amended to
2 read:
3 ~~51934. (a) Each school district shall ensure that all pupils in~~
4 ~~grades 7 to 12, inclusive, receive comprehensive sexual health~~
5 ~~education and HIV prevention education from instructors trained~~
6 ~~in the appropriate courses. Each pupil shall receive this instruction~~
7 ~~at least once in junior high or middle school and at least once in~~
8 ~~high school. This instruction shall include all of the following:~~
9 ~~(1) Information on the nature of HIV, as well as other sexually~~
10 ~~transmitted infections, and their effects on the human body.~~
11 ~~(2) Information on the manner in which HIV and other sexually~~
12 ~~transmitted infections are and are not transmitted, including~~
13 ~~information on the relative risk of infection according to specific~~
14 ~~behaviors, including sexual activities and injection drug use.~~
15 ~~(3) Information that abstinence from sexual activity and injection~~
16 ~~drug use is the only certain way to prevent HIV and other sexually~~
17 ~~transmitted infections and abstinence from sexual intercourse is~~
18 ~~the only certain way to prevent unintended pregnancy. Instruction~~
19 ~~shall provide information about the value of delaying sexual~~
20 ~~activity while also providing medically accurate information on~~
21 ~~other methods of preventing HIV and other sexually transmitted~~
22 ~~infections and pregnancy.~~
23 ~~(4) Information about the effectiveness and safety of all federal~~
24 ~~Food and Drug Administration (FDA) approved methods that~~
25 ~~prevent or reduce the risk of contracting HIV and other sexually~~
26 ~~transmitted infections, including use of antiretroviral medication,~~
27 ~~consistent with the federal Centers for Disease Control and~~
28 ~~Prevention.~~
29 ~~(5) Information about the effectiveness and safety of reducing~~
30 ~~the risk of HIV transmission as a result of injection drug use by~~
31 ~~decreasing needle use and needle sharing.~~
32 ~~(6) Information about the treatment of HIV and other sexually~~
33 ~~transmitted infections, including how antiretroviral therapy can~~
34 ~~dramatically prolong the lives of many people living with HIV~~
35 ~~and reduce the likelihood of transmitting HIV to others.~~
36 ~~(7) Discussion about social views on HIV and AIDS, including~~
37 ~~addressing unfounded stereotypes and myths regarding HIV and~~
38 ~~AIDS and people living with HIV. This instruction shall emphasize~~
39 ~~that successfully treated HIV-positive individuals have a normal~~

1 life expectancy, all people are at some risk of contracting HIV,
2 and the only way to know if one is HIV-positive is to get tested.

3 ~~(8) Information about local resources, how to access local
4 resources, and pupils' legal rights to access local resources for
5 sexual and reproductive health care such as testing and medical
6 care for HIV and other sexually transmitted infections and
7 pregnancy prevention and care, as well as local resources for
8 assistance with sexual assault and intimate partner violence.~~

9 ~~(9) Information about the effectiveness and safety of all
10 FDA-approved contraceptive methods in preventing pregnancy,
11 including, but not limited to, emergency contraception. Instruction
12 on pregnancy shall include an objective discussion of all legally
13 available pregnancy outcomes, including, but not limited to, all of
14 the following:~~

15 ~~(A) Parenting, adoption, and abortion.~~

16 ~~(B) Information on the law on surrendering physical custody
17 of a minor child 72 hours of age or younger, pursuant to Section
18 1255.7 of the Health and Safety Code and Section 271.5 of the
19 Penal Code.~~

20 ~~(C) The importance of prenatal care.~~

21 ~~(10) Information about sexual harassment, sexual assault,
22 adolescent relationship abuse, intimate partner violence, and sex
23 trafficking.~~

24 ~~(11) Information about sexting, including, but not limited to,
25 all of the following:~~

26 ~~(A) The legal consequences and penalties for sharing sexually
27 suggestive or explicit materials, including, but not limited to,
28 applicable federal and state statutes.~~

29 ~~(B) The nonlegal consequences of sharing sexually suggestive
30 or explicit materials, including, but not limited to, the effect on
31 relationships, loss of educational and employment opportunities,
32 and being barred or removed from school programs and
33 extracurricular activities.~~

34 ~~(C) The potential, based upon the unique characteristics of
35 cyberspace and the Internet, of long-term and unforeseen
36 consequences for sharing sexually suggestive or explicit materials,
37 and the importance of safe and responsible use of technology in
38 identifying and reducing unhealthy sexual behaviors such as
39 sexting.~~

1 ~~(D) The possible connection between bullying and cyberbullying~~
2 ~~and pupils sharing sexually suggestive or explicit materials.~~
3 ~~(b) A school district may provide comprehensive sexual health~~
4 ~~education and HIV prevention education consisting of~~
5 ~~age-appropriate instruction earlier than grade 7 using instructors~~
6 ~~trained in the appropriate courses. A school district that elects to~~
7 ~~offer comprehensive sexual health education and HIV prevention~~
8 ~~education earlier than grade 7 may provide age appropriate and~~
9 ~~medically accurate information on any of the general topics~~
10 ~~contained in paragraphs (1) to (11), inclusive, of subdivision (a).~~
11 ~~(e) For purposes of this section, “sexting” has the same meaning~~
12 ~~as defined in subclause (I) of clause (iii) of subparagraph (A) of~~
13 ~~paragraph (2) of subdivision (r) of Section 48900.~~
14 ~~SEC. 4. If the Commission on State Mandates determines that~~
15 ~~this act contains costs mandated by the state, reimbursement to~~
16 ~~local agencies and school districts for those costs shall be made~~
17 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
18 ~~4 of Title 2 of the Government Code.~~