

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 452 (Friedman)
Version: May 17, 2022
Hearing Date: June 8, 2022
Fiscal: Yes
Urgency: No
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SUBJECT

Pupil safety: parental notification: firearm safety laws

DIGEST

This bill requires local educational agencies to inform parents, through a notice, of California's child access prevention laws and other firearm laws. The bill provides complete civil immunity for such agencies, schools, and the California Department of Education for damages caused by, arising out of, or relating to the content of such notices.

EXECUTIVE SUMMARY

Doing more to protect children from firearm-involved accidents is imperative, especially given the statistics. One study finds that 4.6 million children live in homes in which at least one firearm is stored loaded and unlocked.¹ Another study found one-third of adolescents reported being able to access a loaded household firearm within five minutes, often despite their parents' belief that they could not.²

This bill requires local educational agencies (LEAs) to inform parents, through a notice, of California's laws regarding child access to firearms and the safe storage of firearms. The California Department of Education (CDE) is tasked with developing the relevant content in consultation with the Department of Justice (DOJ). The bill grants LEAs,

¹ Deborah Azrael, et al., *Firearm Storage in Gun-Ownning Households with Children: Results of a 2015 National Survey*. (May 10, 2018) *Journal of Urban Health*, <https://doi.org/10.1007/s11524-018-0261-7>. All internet citations are current as of May 24, 2022.

² Carmel Salhi, et al., *Parent and Adolescent Reports of Adolescent Access to Household Firearms in the United States* (March 9, 2021) *JAMA Network Open*, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2777216?utm_source=The+Trace+mailing+list&utm_campaign=e8a1cb7ea1-EMAIL_CAMPAIGN_2019_09_24_04_06_COPY_01&utm_medium=email&utm_term=0_f76c3ff31c-e8a1cb7ea1-112434573.

CDE, and private schools broad immunity from civil liability for any damages allegedly caused by, arising out of, or relating to this content.

This bill is sponsored by Brady Against Gun Violence. It is supported by a variety of gun control advocacy groups, including Everytown for Gun Safety Action Fund. There is no known opposition. This bill passed out of the Senate Education Committee on a 6 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)
- 2) Requires the governing board of each school district to provide a number of notices to the parent or guardian of a minor pupil regarding the rights or responsibilities of the parent or guardian under a series of Education Code provisions. (Educ. Code § 48980.) This includes, but is not limited to, notices regarding:
 - a) the availability of individualized instruction;
 - b) sexual harassment policies;
 - c) disciplinary rules; and
 - d) absence regulations.
- 3) Establishes the crime of "criminal storage of a firearm" in the first, second, or third degree, generally involving culpable storage of a firearm with a likelihood that a child is able to gain access to the firearm. (Pen. Code § 25100.)
- 4) Requires licensed firearm dealers to conspicuously post within the licensed premises various warnings, including:
 - a) "Firearms must be handled responsibly and securely stored to prevent access by children and other unauthorized users. California has strict laws pertaining to firearms, and you may be fined or imprisoned if you fail to comply with them. Visit the website of the California attorney general at <https://oag.ca.gov/firearms> for information on firearm laws applicable to you and how you can comply;"
 - b) "If you keep a firearm within any premises under your custody or control, and a person under 18 years of age obtains it and uses it, resulting in injury or death, or carries it to a public place, you may be guilty of a misdemeanor or a felony unless you stored the firearm in a locked

container or locked the firearm with a locking device to keep it from temporarily functioning;”

- c) “Children may be unable to distinguish firearms from toys and may operate firearms, causing severe injuries or death. If you keep a firearm within any premises under your custody or control, and a person under 18 years of age gains access to the firearm and carries it off-premises, you may be guilty of a misdemeanor, unless you stored the firearm in a locked container, or locked the firearm with a locking device to keep it from temporarily functioning;”
 - d) “You may be guilty of a misdemeanor, including a significant fine or imprisonment, if you keep a firearm where a minor is likely to access it or if a minor obtains and improperly uses it, or carries it off of the premises to a school or school-sponsored event, unless you stored the firearm in a locked container or locked the firearm with a locking device;” and
 - e) “If you negligently store or leave a firearm within any premises under your custody or control where a person under 18 years of age is likely to access it, you may be guilty of a misdemeanor, including a significant fine, unless you stored the firearm in a locked container or locked the firearm with a locking device.” (Pen. Code § 26835.)
- 5) Requires certain licensed persons to post within the licensed premises various notices required by Section 26835 disclosing the duty imposed upon any person who keeps a loaded firearm. (Pen. Code § 25130.)

This bill:

- 1) Requires an LEA to inform, through a notice in the manner prescribed, the parents or guardians of each enrolled pupil of California’s child access prevention laws and laws relating to the safe storage of firearms, as specified.
- 2) Requires CDE, on or before July 1, 2023, to develop, in consultation with DOJ, concise content for the notice and to update it as necessary. The content shall be shared with all LEAs and other schools upon request.
- 3) Immunizes LEAs, private schools, and CDE from civil liability for any damages allegedly caused by, arising out of, or relating to the content described therein.

COMMENTS

1. Requiring notice of firearm laws regarding safe storage and child-access prevention

Gun violence and safety is a critical issue needing immediate attention: “Gun violence is an urgent, complex, and multifaceted problem. It requires evidence-based, multifaceted

solutions.”³ As seen from the statistics laid out above, millions of children live in proximity to firearms. This jeopardizes not only their safety, but that of their communities. An analysis of targeted school violence conduct by the United States Secret Service found that 76 percent of perpetrators acquired a firearm from the home of a parent or another close relative.⁴

A report commissioned by the American Psychological Association found that “public health messaging campaigns on safe gun storage are needed. The practice of keeping all firearms appropriately stored and locked must become the only socially acceptable norm.”⁵

This bill addresses these issues by requiring LEAs to provide parents with notices that inform them about California’s laws regarding safe storage of firearms and provisions that criminalize the unsafe storage of weapons near children or where children are likely to be present. CDE, in consultation with DOJ, is tasked with developing content for these notices.

The author writes:

AB 452 would require the California Department of Education, in consultation with the Department of Justice, to develop and update as necessary a notification regarding safe firearm storage that is annually provided to school districts, county offices of education and charter schools for distribution. Specifically this notification will inform parents and guardians of pupils of California’s Child Access Prevention laws and laws relating to the safe storage of firearms. Awareness of these laws help prevent tragedies due to unintentional discharges, suicide, and gun theft by creating an environment helping to ensure firearms are only used by their rightful owners. Every year, 18,000 children and teens are shot and killed or wounded and approximately 3 million are exposed to gun violence. Unfortunately, the COVID-19 pandemic has only exacerbated this problem. It is time to ensure firearms are safely stored away from children and teens, as required by law.

Writing in support, Brady Campaign to Prevent Gun Violence and Brady California argue:

³ Dewey Cornell & Nancy G. Guerra, *Gun Violence: Prediction, Prevention, and Policy* (2013) American Psychological Association, <https://www.apa.org/pubs/reports/gun-violence-report.pdf>.

⁴ *Protecting America’s Schools: A U.S. Secret Service Analysis of Targeted School Violence* (2019) National Threat Assessment Center, U.S. Secret Service, https://www.secretservice.gov/sites/default/files/2020-04/Protecting_Americas_Schools.pdf.

⁵ See note 3.

Passing comprehensive standards for safety devices and storage is extremely important; however, we are missing a crucial step when we don't take the time to educate the public, and in particular parents, about these lifesaving laws. Nearly 70% of student shooters gained access to a lawfully purchased gun from their residence or that of a relative, 87% of kids know where their parents' guns are kept and 60% have handled them. Over 80% of teens who commit suicide with a gun used one that belonged to someone in their home, and guns are the third leading cause of death for kids. Unfortunately, the COVID-19 pandemic has only exacerbated this problem. Children are spending longer periods of time unsupervised at home while experiencing increased levels of social isolation and depression with no access to the critical mental health services provided by their schools.

2. Granting broad immunity to LEAs, private schools, and CDE

The bill also includes a provision that grants broad immunity:

A local educational agency, a private school, and the department are immune from civil liability for any damages allegedly caused by, arising out of, or relating to the content described in this section.

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Although immunity provisions are rarely preferable, the Legislature has in limited scenarios approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Immunities are generally afforded when needed to ensure the willingness of individuals to continue

taking on certain roles that may involve some risk and to incentivize certain conduct, such as the provision of life-saving or other critical services. Examples include protections for use of CPR (Civ. Code § 1714.2); use of an automated external defibrillator (Civ. Code § 1714.21); use of opiate overdose treatment (Civ. Code § 1714.22); providing emergency care at the scene of an emergency (Health & Saf. Code §§ 1799.102, 1799.106); and performing emergency rescue services (Health & Saf. Code § 1799.107). However, as indicated above, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

Here it is not clear that an LEA must use the notice or content that is provided by CDE and therefore grants a great deal of leeway as to what is being presented to parents. Given the gravity of the topic, this is an area that arguably calls for extremely careful navigation. Therefore, while an immunity provision may be called for to ensure those involved will comply, one that is too broad can create unintended consequences that no one is held to account for.

In order to better tailor this immunity provision so that it encourages compliance without protecting unreasonable or even reckless conduct, the author has agreed to amendments that require LEAs to use model language developed by CDE. LEAs, private schools, and CDE are only immunized from liability caused by, arising out of, or related to the notice if they use the model language provided. This ensures that no liability attaches for simply distributing the language they have been provided.

SUPPORT

Brady Campaign to Prevent Gun Violence (sponsor)
Brady Campaign California
City of Burbank
City of Solana Beach
Everytown for Gun Safety Action Fund
Friends Committee on Legislation of California
March for Our Lives Action Fund
Moms Demand Action for Gun Sense in America
National Association of Social Workers, California Chapter
San Diegans for Gun Violence Prevention
Students Demand Action for Gun Sense in America
WAVE Action Fund

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 1327 (Hertzberg, 2022) establishes privately-enforced civil causes of action against any person who manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any firearm lacking a required serial number, assault weapon, .50 BMG rifle, or firearm precursor part, as specified. This bill is currently in the Assembly.

AB 1621 (Gipson, 2022), among other things, prohibits the sale, transfer, or possession of an unserialized firearm precursor part, except as specified, and explicitly prohibits the possession or transfer of a firearm without a serial number or mark of identification. This bill is currently in the Assembly Public Safety Committee.

Prior Legislation: AB 276 (Friedman, Ch. 62, Stats. 2020), before being gutted and amended to deal with an unrelated topic, would have required school districts, county offices of education, and charter schools to inform parents and guardians on the same laws identified by this bill.

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)
Assembly Floor (Ayes 66, Noes 1)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Education Committee (Ayes 6, Noes 0)
