

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2149 (Connolly)  
Version: June 24, 2024  
Hearing Date: July 2, 2024  
Fiscal: Yes  
Urgency: No  
ID

**SUBJECT**

Gates: standards: inspection

**DIGEST**

This bill requires specified gates within the state to meet specified standards for safety, and requires the specified gates be inspected by a professional or qualified employee on or before July 1, 2026, and at least every 10 years thereafter, among other requirements.

**EXECUTIVE SUMMARY**

On December 19, 2019, 7-year-old Alex Quanbeck was playing football with friends during recess at a private elementary school in San Rafael. When he attempted to close a very large gate, the gate came off its track, fell directly on top of him, and killed him. A subsequent investigation found that the gate was missing various safety mechanisms that would have prevented it from falling over, and likely would have saved Alex's life. However, this tragedy is not an isolated incident; numerous other accidents have occurred across the state in the last decade. This bill attempts to prevent such accidents by requiring gates within the state that are at least 50 pounds, 48 inches in width, and 84 inches in height meet certain specified standards. In addition, the bill requires such gates be inspected by a professional or qualified employee on or before July 1, 2026, and at least every 10 years thereafter. If a gate is found to be in need of repair upon inspection, this bill provides certain requirements for those repairs to be completed, and for the local building department to be notified if such repairs are not completed. A local building department must notify the owner of the gate of their obligation to repair the gate, and may assess administrative fines for not doing so. This bill also provides that a gate that is not repaired after such notice is a public nuisance, and provides for a district attorney, county council, or city attorney to sue for an injunction or civil penalty. AB 2149 is sponsored by the Hummingbird Alliance, a nonprofit created in Alex's honor, and is supported by the American Fence Association and numerous other groups. It is opposed by the California Chamber of Commerce, the California State Association of Counties, and various business associations and other groups.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Specifies that every person is responsible, not only for their willful acts, but also for their lack of ordinary care or skill in the management of their person or property that injures another. (Civ. Code § 1714.)
- 2) Provides that anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. (Civ. Code § 3479.)
- 3) Specifies that a public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (Civ. Code § 3480.)
- 4) Specifies that a person harmed by the nuisance may bring a civil action against the nuisance, and that local agencies with appropriate authority may act to abate a nuisance. (Civ. Code §§ 3491-3494.)
- 5) Provides that for any of the following public nuisance cases, the court may award costs, including the costs of investigation and discovery, and reasonable attorney's fees, which are not compensated for pursuant to some other provision of law, to the prevailing party:
  - a) in any case in which a governmental agency seeks to enjoin the sale, distribution, or public exhibition, for commercial consideration, of obscene matter;
  - b) in any case in which a governmental agency seeks to enjoin the use of a building or place for the purpose of illegal gambling, lewdness, assignation, human trafficking, or prostitution; or any case in which a governmental agency seeks to enjoin acts of illegal gambling, lewdness, assignation, human trafficking, or prostitution in or upon a building or place;
  - c) in any case in which a governmental agency seeks to enjoin the use of a building or place, or seeks to enjoin in or upon any building or place the unlawful sale, manufacture, service, storage, or keeping or giving away of any controlled substance; and
  - d) in any case in which a governmental agency seeks to enjoin the unlawful sale, service, storage, or keeping or giving away of alcoholic liquor. (Civ. Code § 3496.)

This bill:

- 1) Establishes the “Alex Quanbeck Gate Safety Act.”
- 2) Specifies that in any case in which a governmental agency seeks to enjoin the continued use of a regulated gate that is in need of repair or replacement as provided by the bill and that poses an immediate threat to the safety of the public, an entire community or neighborhood, or any considerable number of persons; is a public nuisance; and the court may award costs, including the costs of investigation and discovery, and reasonable attorney’s fees, which are not compensated for pursuant to some other provision of law, to the prevailing party.
- 3) For purposes of its provisions, defines the following terms:
  - a) “building department” to mean the local government office that is responsible for overseeing local code enforcement activities, including administration of the building department, interpretation of code requirements, and direction of the code adoption process in the city, county, or city and county where the regulated gate is located, or the office’s authorized representative;
  - b) “contractor” to mean a fencing contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code;
  - c) “owner” to mean any person, co-partnership, association, corporation, state agency, local agency, or fiduciary, or their authorized agent who has legal or equitable title of, or any ownership interest in, real property upon which a regulated gate is installed;
  - d) “positive stop” to mean an immovable component that, by its placement, physically impedes the motion of a regulated gate;
  - e) “professional” to mean any of the following:
    - i. a person who is certified by the International Code Council;
    - ii. an architect;
    - iii. an engineer;
    - iv. a contractor; or
    - v. an active local government building inspector.
  - f) “regulated gate” means any gate, including a rolling or swinging gate, that weighs more than 50 pounds and is more than 48 inches wide or more than 84 inches high that is intended to be used by the public, an entire community or neighborhood, or any considerable number of persons;
    - i. specifies that a “regulated gate” does not include a gate that is installed on the premises of a facility that produces, stores, or sells an agricultural product, as defined, unless the gate is located in an area that is open to the public, an entire community or neighborhood, or any considerable number of persons;

- g) “written certification” means a document attesting that a regulated gate has been inspected by a professional or qualified employee, meets the standards listed in Section 7111, and is in good working order. In addition, the document shall clearly include each of the following:
    - i. the inspection date;
    - ii. the site address;
    - iii. name of the owner;
    - iv. contact information of the professional; and
    - v. the professional’s signature or stamp.
- 4) Provides that a “regulated gate” shall meet the requirements of ASTM International F900 and F1184, be installed according to the manufacturer’s recommendations, and be designed, constructed, and installed to meet all of the following requirements:
  - a) the gate shall not fall more than 45 degrees from a vertical plane when it is detached from the supporting hardware;
  - b) the gate shall be balanced and shall not move under its own weight; and
  - c) the rolling or sliding gate shall have positive stops.
- 5) Provides that in the case of a regulated gate operated by a motor, the regulated gate, in addition to meeting the requirements of 1), shall have a motorized operator or similar system that meets that meets the requirements of Underwriters Laboratories, Inc. (UL) 325 and ASTM F2200.
- 6) Requires, on or before July 1, 2026, each building department in the state to update its code requirements to ensure that any newly installed regulated gate in its jurisdiction complies with the bill’s requirements.
- 7) Requires, on or before July 1, 2026, that an owner of a regulated gate shall have the regulated gate inspected by a professional or qualified employee to ensure that the regulated gate complies with the requirements described in 3) and 4) and obtain a written report from the professional that verifies compliance. The owner shall have that regulated gate re-inspected at least once every ten years thereafter, in accordance with the provisions of this bill. Any repairs performed on a regulated gate shall ensure that the regulated gate continues to comply with the requirements described in 1) and 2).
- 8) Requires an owner to maintain the written report regarding the regulated gate’s compliance with the requirements described in 3) and 4) for at least ten years and make the report available to the building department upon request.
- 9) Provides that the continued and ongoing maintenance of a regulated gate in a safe and functional condition in compliance with this part shall be the responsibility of the owner.

- 10) Provides that a regulated gate found by a professional or qualified employee, upon inspection, to be in need of repair or replacement shall be corrected by the owner; and requires all necessary repair or replacement work shall be performed by a contractor and pursuant to a permit issued by the appropriate local authority, if required.
- 11) Provides that a regulated gate that a professional or qualified employee determines, upon inspection, to pose an immediate threat to safety, or in a condition which prevents the gate from operating safely, is considered an emergency condition, and the owner shall immediately stop the use of the gate until necessary repairs are completed and shall engage a contractor to perform the repairs necessary to mitigate the emergency condition. Specifies that repairs of emergency conditions shall comply with the requirements of the bill, be inspected by a professional, and be reported to the building department.
- 12) Allows the owner of a regulated gate that needs repairs, but that, in the opinion of a professional, does not pose an immediate threat to safety to complete repairs within 30 days of receipt of the professional or qualified employee's inspection report and requires the owner to apply for a permit to make such repairs, if required. If a permit is required in order to repair the gate, after the permit has been granted the owner shall have a period of 30 days to engage a contractor and make the repairs, unless an extension of time is granted by the building department.
  - a) If the owner does not engage a contractor to repair the regulated gate within 30 days of having received the necessary permits, the professional or qualified employee who performed the inspection shall notify the owner and the building department.
  - b) The building department shall promptly notify the owner of their responsibility to repair the regulated gate within 30 days and that an administrative fine may be imposed pursuant to this paragraph upon failure of the owner to comply with the notice.
  - c) If the repairs have not been completed within 30 days of the date when the building department sends the notice, the owner may be assessed an administrative fine by the building department of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) per day until the repairs are completed, the regulated gate is inspected by a professional or qualified employee, and the fact of the regulated gate's repair and compliance with this section is reported to the building department, unless an extension of time is granted by the building department. The building department may also recover its reasonable regulatory costs of enforcement of this part from the owner.
- 13) Specifies that the proceeds of an administrative fine or regulatory cost assessed pursuant to this paragraph shall be deposited into the treasury of the local government.

- 14) Specifies that an owner who is assessed an administrative fine or regulatory cost pursuant to this subparagraph may contest the assessment as provided in subdivision (b) of Section 53069.4 of the Government Code.
- 15) Declares a regulated gate that fails to comply with this part 30 days after the owner of the gate has been notified of the violation pursuant to paragraph (3) of subdivision (e) to be a public nuisance.
- 16) Clarifies that nothing in the bill affects any of the following:
  - a) a property owner's legal responsibility to maintain their property in a safe condition and any liability the owner has pursuant to existing law for injuries caused by a dangerous condition on their property;
  - b) the ability of a building department to inspect real property for compliance with applicable state and local laws and ordinances, oversee local code enforcement activities, interpret state and local building code requirements, direct the code adoption process, and enforce applicable state and local laws and ordinances that govern construction; and
  - c) the ability of the legislative body of a city, county, or city and county to adopt any ordinance consistent with the bill.
- 17) Provides that a district attorney, county council, or city attorney may file a complaint for injunctive relief or a civil penalty against an owner of a regulated gate for a violation of the bill's provisions.

## COMMENTS

### 1. Author's statement

According to the author:

The tragedy of Alex Quanbeck's death was both heartbreaking and preventable, and his story has touched our community. Strengthening gate safety measures addresses preventable tragedies by ensuring that if a gates' structure fails, there will be additional safety measure protecting children from being crushed.

The lack of regulation surrounding these massive gates means there are an untold number of ticking time bombs throughout California that have the potential to hurt or kill many others. This bill's requires simple, cost-effective safety pieces that will go on to save lives and prevent further tragedies.

### 2. The dangers of unsafe gates

This bill arises from a tragedy that took place in San Rafael in 2019 involving a manual gate at an elementary school. As stated in the Assembly Judiciary Committee Analysis:

On December 19, 2019, 7-year-old Alex Quanbeck was playing football with friends during recess at a private elementary school in San Rafael when he noticed that the large entry vehicular gate to the school was open. When he attempted to close the very large (300 lb., 30 feet wide by eight feet high) gate, the gate came off its track, fell directly on top of him, and crushed him to death.

The detectives investigating Alex's death consulted with a fencing expert with 45 years of experience installing gates and with an extensive background in researching gate accidents. He voluntarily agreed to examine the manual gate installation to learn how the gate fell on Alex. He discovered that someone had modified the roller wheel hardware and cut the rear retaining J-hooks. The lack of proper gate stops and the absence of a fall-over post caused the gate to topple over and cause Alex's death. Installing a \$50 fall-over post is an easy and inexpensive solution to reduce the likelihood of manual gate injuries. In this case, it would have prevented the tragedy. Without such protections, when a gate is poorly designed, altered, damaged, or simply overused, it can separate from its supports and fall to the ground. The Quanbeck family settled their wrongful death lawsuit in June 2021 and started The Hummingbird Alliance, a nonprofit entity in Alex's honor shortly thereafter. As part of the Quanbecks' private settlement, the installer of the gate that killed Alex was required to issue a safety recall for the other similarly designed gates it had installed. It fixed approximately 40 other gates with similar deficiencies – an alarming revelation to the Quanbecks, and further confirmation that drastic changes to gate safety standards is needed.<sup>1</sup>

Alex's death was a preventable tragedy and an injustice, and one that no family should have to endure. And, alarmingly, it is not the only incident in the state that has resulted in injury or death. One report cites other recent incidents – one in San Jose, California in 2017, one in Sacramento, California in 2015, and another in Sacramento, California in 2013 – in which a manual gate severely injured or killed someone.<sup>2</sup> In addition to these tragedies in California, about a half dozen others have occurred throughout the United States in the last decade. In 2001, the United States Consumer Product Safety Commission (CPSC) estimated that there had been 25,000 injuries from automatic gates that utilize an engine to open or close between 1990 and 2000.<sup>3</sup> As part of that report, the CPSC instituted tougher safety standards with Underwriters Laboratories for such gates. However, no current statistics or data are readily available for all gate-related injuries or deaths in the state or nationwide. While statewide data relating to the

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<sup>1</sup> Assembly Judiciary Committee, Analysis of AB 2149 (Apr. 12, 2024).

<sup>2</sup> Eric Bledsoe et al., *That's a Killer Gate ... No Joke*, Fencepost (American Fence Association Jan. 2023).

<sup>3</sup> U.S. Consumer Product Safety Commission, "New Safety Standard for Automatic Security Gates Help Prevent Deaths and Injuries to Children," (Oct. 23, 2001), <https://www.cpsc.gov/Newsroom/News-Releases/2002/New-Safety-Standard-for-Automatic-Security-Gates-Helps-Prevent-Deaths-and-Injuries-to-Children>.

prevalence of gate-related injuries may be relevant for policy-making, it is worth noting that no death from a gate-related accident should be acceptable.

Many manual fences are dangerous because of their sheer size and weight; they can weigh as much as a few hundred pounds, and can be much taller than a child or adult. In addition, many of the deaths and accidents that have occurred due to a fence could easily have been prevented. There are various safety devices that can ensure that a fence does not come off of its track and cannot fall over. Some of these devices include a “positive stop,” a fall-over post, and a cable or chain attached to the top of the gate.

### 3. Public nuisance law and negligence

When an accident occurs, there are a number of remedies an aggrieved party may pursue. One is the concept of public nuisance, which typically relates to a thing or person’s conduct that interferes with the rights of the public. Under California law, a nuisance is anything that is “injurious to health [...] or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or [that] unlawfully obstructs the free passage or use, in the ordinary manner, of [...] any public park, square, street, or highway.” (Civ. Code § 3479.) A public nuisance is defined as “one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” (Civ. Code § 3480.) A person harmed by the nuisance may bring a civil action against the nuisance, and local agencies with appropriate authority may abate a nuisance. (Civ. Code §§ 3491-3494.)

In addition to nuisance law, the tort of negligence can apply when someone is injured on another’s property or in a variety of circumstances. In California, negligence exists where a person’s willful acts or lack of ordinary care or skill in the management of their person or property injured another. (Civ. Code § 1714.) Negligence requires that a plaintiff show that the defendant owed a duty of care to the plaintiff, that the defendant breached this duty of care, and that the break was the proximate cause of the plaintiff’s injury. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.) Property owners generally have a duty of care to maintain their property in a reasonably safe condition and prevent foreseeable harms to those who enter their land. (*Rowland v. Christian* (1968) 69 Cal. 2d 108, 119.) In addition, negligence per se is a legal concept in which a persons’ failure to comply with a statutory duty or requirement is presumed to be negligent, absent a justification or excuse for their violation of the statute. (*Steinle v. City and County of San Francisco* (2017) 919 F.3d 1154.) Under these concepts of negligence law, an owner of property likely has a duty to protect those who enter their property from faulty and dangerous gates. Therefore, if someone is injured by such a gate, they may well be able to recover from the property owner for the owner’s failure to properly maintain the gate. However, just because a person has the ability to sue should they be injured by a gate, does not necessarily prevent the harm from occurring.



4. AB 2149 creates an inspection and regulatory scheme to ensure that certain gates are safe

AB 2149 aims to prevent future harms and deaths from faulty and unsafe gates preemptively. It specifies a number of standards and requirements for regulated gates, and establishes an inspection regime to require property owners to inspect and repair any non-conforming gates. AB 2149 applies to gates that are at 50 pounds in weight, and at least 48 inches wide and 84 inches tall. Additionally, it applies to all gates in the state that are “intended to be used by the public, an entire community or neighborhood, or any considerable number of persons.”

AB 2149’s standards require regulated gates to meet specified industry standards set by ASTM International (formerly the American Society for Testing and Materials). In addition, regulated gates must not fall more than 45 degrees from a vertical plane when detached from its supporting hardware, must be balanced and not move under its own weight, and a regulated sliding or rolling gate must have a positive stop.

AB 2149 also requires, by or before July 1, 2026, an owner of a regulated gate to have the gate inspected by a professional or qualified employee to ensure that it complies with the standards for a regulated gate as described above. A professional capable of performing this inspection may be a certified by the International Code Council, a licensed architect or engineer, a contractor, or an active local government building inspector. The owner must obtain a written report and certification from the inspector regarding the gate’s compliance with the safety standards in the bill. After this initial inspection, an owner must have the regulated gates on their property inspected at least once every 10 years.

If the inspector finds that the gate is in need of repair or replacement, the owner must correct the deficiency in the gate. If the inspector finds that the gate poses an immediate threat to safety, or is in a condition that prevents its safe operation, the gate is considered to be an emergency condition and the owner must immediately stop using the gate until all necessary repairs are made. The repair of such a gate must be inspected, and reported to the local building department. If, upon inspection, the inspector finds that the gate needs repairs but is not an immediate threat to safety, the owner must request a permit to repair the gate within 30 days, and must complete the repair within 30 days of approval of the permit. If the owner does not complete the repair, the inspector is required to notify the owner and the building department. At that point, the building department must promptly notify the owner of their responsibility to repair the gate within 30 days and of the fact that administrative fines may be imposed for failing to do so. The building department may assess an administrative fine of between \$100 and \$500 per day until the gate is repaired, the gate is inspected, and the gate’s compliance is reported to the building department. The building department is allowed to collect the reasonable regulatory costs of enforcement.

AB 2149 includes two other enforcement mechanisms. It first specifies that a gate that fails to comply with the bill's requirements within 30 days of the owner being notified of its non-compliance and the owner's failure to repair is considered a public nuisance. In addition, AB 2149 provides that a district attorney, county counsel, or city attorney may file a civil action seeking injunctive relief or a civil penalty against the owner of the regulated gate for a violation of the bill's requirements.

## 5. Amendments

The author has agreed to amendments that will specify that the inspection requirement for current gates will apply only to California public or private elementary through high schools and public parks. New gates installed after the enactment of this bill on any property in which the gate is intended to be used by the public, an entire community or neighborhood, or any considerable number of persons, still will be subject to the requirements of this bill. The amendments also will revise local building departments' role in ensuring the repair of gates determined during inspection to be in need of repair. The amendments also make clarifying amendments, including adding a definition of "qualified employee" as used in the bill. A full mock-up of the amendments are attached at the end of this analysis.

## 6. Arguments in support

According to the Hummingbird Alliance, which is a sponsor of AB 2149:

Our organization was founded in 2020 in honor of our seven-year old son Alex Quanbeck, who died December 19, 2019 while playing during recess at a school in San Rafael, California. Alex was playing football with other first-grade friends when an unpermitted, poorly designed and ill-maintained 300 pound rolling gate fell on him.

Since our founding, we have identified nearly 20 other fatalities across the country from falling gates that did not have a basic proper safety mechanism installed. These gates and fences are part of our everyday lives as they exist at schools, multifamily residential buildings, agricultural land, industrial yards and commercial properties. Our ultimate goal is to put an end to these unnecessary deaths with the simple addition of a ~\$50 part known as a "fall stop post" that is recommended by industry standards but not codified into current California law. This law would only apply to select gates that pose the greatest risk to citizens.

We must ensure that both new gate installations and existing gates contain these specific safeguards to protect people from the hazards they may not know exist. As the recent death of a lumber yard employee in Anaheim demonstrates, these gates continue to pose a significant risk to public safety and we have the

opportunity with the passage of this law to spread public awareness and provide a safe environment where people learn, work and live.

## 7. Arguments in opposition

According to the Association of California Water Agencies, which is opposed to AB 2149:

[AB 2149] seeks to create a regulatory framework for the regulation of large heavy gates by creating maintenance standards, imposing administrative fines and declaring unrepaired gates a public nuisance. However, the definitions in this bill are broad and open to significant interpretation; the lack of specificity and wide application of this bill will lead to frivolous litigation and substantial costs to local public agencies. While our organizations are sympathetic to the issue this bill seeks to address, the sponsors should seek a more appropriate way to ensure these gates are safe through existing regulatory bodies and programs.

The provisions of this bill would apply broadly to many gates expanding well beyond the type of gate that motivated the introduction of the bill. The recent amendment clarifying the definition of a regulated gate does little to narrow the impact of the bill as it would still apply to any gate used by a “considerable number of persons,” which is entirely up to interpretation. As a result of the vague language in the bill, most local agencies will likely assume that any gate that meets the height and weight requirements is included within the scope of this new regulatory scheme. This will be a costly new local mandate and will distract from other more important activities including the implementation of important statewide goals to work toward greater climate resilience.

In addition, this bill could subject local agencies to significant potential liability. While local agencies may employ a “professional” as defined in the bill that could inspect its gates, utilizing an in-house employee could make it a greater target for potential civil penalties. The broad terminology in this bill lends itself to the potential for opportunistic litigation over regulated gates that are alleged to be out of compliance. The Assembly Appropriations Committee contemplates a potential of five cases as a result of this bill at a cost of \$160,000, but there is the potential for many more cases than that to be filed and tie up the court’s and local agencies’ time and resources for frivolous lawsuits.

### SUPPORT

The Hummingbird Alliance (sponsor)  
American Fence Association (sponsor)  
City of San Rafael  
Marin County Office of Education

Sonoma County Superintendent of Schools  
Town of Fairfax

**OPPOSITION**

Association of California Water Agencies  
Agricultural Council of California  
Almond Alliance  
Association of California School Administrators  
Associated General Contractors  
Association of California Egg Farmers  
California Association of Boutique and Breakfast Inns  
California Association of Sheet Metal & Air Conditioning Contractors National  
Association  
California Association of Wheat Growers  
California Association of Winegrape Growers  
California Attractions and Parks Association  
California Bean Shippers Association  
California Building Industry Association  
California Cattlemen's Association  
California Chamber of Commerce  
California Coalition for Adequate School Housing  
California Construction and Industrial Materials Association  
California Farm Bureau Federation  
California Food Producers  
California Forestry Association  
California Framing Contractors Association  
California Fuels and Convenience Alliance  
California Grain & Feed Association  
California Grocers Association  
California Manufacturers and Technology Association  
California Pear Growers Association  
California Seed Association  
California Special Districts Association  
California State Association of Counties  
California State Floral Association  
California Warehouse Association  
Corona Norco Unified School District  
County of Placer  
Family Winemakers of California  
Granite Construction  
Kern County Superintendent of Schools  
League of California Cities  
Los Angeles Unified School District

Pacific Coast Renderers Association  
Pacific Egg and Poultry Association  
Residential Contractors Association  
Riverside County Office of Education  
Rural County Representatives of California  
San Bernardino County  
Small School Districts Association  
Wine Institute

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: None known.

**PRIOR VOTES:**

Assembly Floor (Ayes 51, Noes 10)  
Assembly Appropriations Committee (Ayes 11, Noes 3)  
Assembly Judiciary Committee (Ayes 10, Noes 1)

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**Mock-up of Proposed Amendments to AB 2149 (Connolly)**

*(Amendments may be subject to any technical or corrective changes by Legislative Counsel)*

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

**SECTION 1.** Section 3496 of the Civil Code is amended to read:

**3496.** In any of the following described cases, the court may award costs, including the costs of investigation and discovery, and reasonable attorney's fees, which are not compensated for pursuant to some other provision of law, to the prevailing party:

(a) In any case in which a governmental agency seeks to enjoin the sale, distribution, or public exhibition, for commercial consideration, of obscene matter, as defined in Section 311 of the Penal Code.

(b) In any case in which a governmental agency seeks to enjoin the use of a building or place for the purpose of illegal gambling, lewdness, assignation, human trafficking, or prostitution; or any case in which a governmental agency seeks to enjoin acts of illegal gambling, lewdness, assignation, human trafficking, or prostitution in or upon a building or place, as authorized in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(c) In any case in which a governmental agency seeks to enjoin the use of a building or place, or seeks to enjoin in or upon any building or place the unlawful sale, manufacture, service, storage, or keeping or giving away of any controlled substance, as authorized in Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code.

(d) In any case in which a governmental agency seeks to enjoin the unlawful sale, service, storage, or keeping or giving away of alcoholic liquor, as authorized in Article 1 (commencing with Section 11200) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(e) In any case in which a governmental agency seeks to enjoin the continued use of a regulated gate, as defined in Section 7111, that is in need of repair or replacement, as specified in Part 5.6 (commencing with Section 7110), and that poses an immediate threat to the safety of the public, an entire community or neighborhood, or any considerable number of persons.

**SEC. 2.** Part 5.6 (commencing with Section 7110) is added to Division 4 of the Civil Code, to read:

**PART 5.6.** Regulated Gates

**7110.** This part shall be known, and may be cited, as the Alex Quanbeck Gate Safety Act.

**7111.** For purposes of this part, the following definitions shall apply:

(a) "Building department" means the local government office that is responsible for overseeing local code enforcement activities, including administration of the building department, interpretation of code requirements, and direction of the code adoption process in the city, county, or city and county where the regulated gate is located, or the office's authorized representative.

(b) "Contractor" means a fencing contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(c) "Owner" means any person, co-partnership, association, corporation, state agency, local agency, or fiduciary, or their authorized agent who has legal or equitable title of, or any ownership interest in, real property upon which a regulated gate is installed.

(d) "Positive stop" means an immovable component that, by its placement, physically impedes the motion of a regulated gate.

(e) "Professional" means any of the following:

(1) A person who is certified by the International Code Council.

(2) An architect who is licensed pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code.

(3) An engineer who is licensed pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code.

(4) A contractor.

(5) An active local government building inspector.

(f) (1) "Regulated gate" means any gate, including a rolling or swinging gate, that weighs more than 50 pounds and is more than 48 inches wide or more than 84 inches high that is intended to be used by the public, an entire community or neighborhood, or any considerable number of persons.

(2) "Regulated gate" does not include a gate that is installed on the premises of a facility that produces, stores, or sells an agricultural product, as defined in Section 54004 of the Food and Agricultural Code, unless that gate is located in an area that is open to the public, an entire community or neighborhood, or any considerable number of persons.

(g) "Written certification" means a document attesting that a regulated gate has been inspected by a professional or qualified employee, meets the standards listed in Section 7112, and is in good working order. In addition, the document shall clearly include each of the following:

- (1) Inspection date.
- (2) Site address.
- (3) Name of the owner.
- (4) Contact information of the professional.
- (5) The professional's signature or stamp.

**(h) "Qualified employee" means a person who is trained and knowledgeable about the tasks necessary to install, maintain, and operate a regulated gate or who meets legitimate skill, experience, or other requirements as determined by an employer who maintains general liability insurance.**

**7112.** (a) A regulated gate shall meet the requirements of ASTM International F900 and or F1184, be installed according to the manufacturer's recommendations, and be designed, constructed, and installed to meet all of the following requirements:

- (1) The gate shall not fall more than 45 degrees from a vertical plane when it is detached from the supporting hardware.
- (2) The gate shall be balanced and shall not move under its own weight.
- (3) A sliding or rolling gate shall have positive stops.

(b) In the case of a regulated gate that is operated by a motor, the regulated gate, in addition to meeting the requirements of subdivision (a), shall have a motorized operator or similar system that meets the requirements of Underwriters Laboratories, Inc. (UL) 325 and ASTM F2200.

**(c) (1) This section shall apply to all regulated gates installed on or after January 1, 2025.**

**(2) For regulated gates in existence as of January 1, 2025, this section applies only to regulated gates:**

**(A) on private or public elementary, middle school, and high school grounds.**

**(B) in local or state parks.**



**7113.** (a) On or before July 1, 2026, each building department shall update its code requirements to ensure that any newly installed regulated gate in its jurisdiction complies with Sections 7111 and 7112.

(b) On or before July 1, 2026, an owner of a regulated gate shall have the regulated gate inspected by a professional or qualified employee to ensure that the regulated gate complies with the requirements described in Section 7112 and obtain a written report from the professional or qualified employee that verifies compliance. The owner shall have that regulated gate reinspected at least once every 10 years thereafter, in accordance with this part. Any repairs performed on a regulated gate shall ensure that the regulated gate continues to comply with the requirements described in Section 7112.

(c) An owner shall maintain the written report regarding the regulated gate's compliance with the requirements described in Section 7112 for at least 10 years and make the report available to the building department upon request.

(d) The continued and ongoing maintenance of a regulated gate in a safe and functional condition in compliance with this part shall be the responsibility of the owner.

(e) A regulated gate found by a professional or qualified employee, upon inspection, to be in need of repair or replacement shall be corrected by the owner. All repair and replacement work shall be performed by a contractor or qualified employee and pursuant to a permit issued by the appropriate local authority, if required.

(f) (1) A regulated gate that a professional or qualified employee determines, upon inspection, to pose an immediate threat to safety, or the condition of which prevents the gate from operating safely, shall be considered an emergency condition and the owner shall immediately stop the use of the gate until necessary repairs are completed and engage a contractor or qualified employee to perform the repairs necessary to mitigate the emergency condition. Repairs of emergency conditions shall comply with the requirements of this part, be inspected by a professional or qualified employee, and be reported to the building department.

(2) The owner of a regulated gate that needs repairs, but that, in the opinion of a professional or qualified employee, does not pose an immediate threat to safety shall, if required, apply for a permit for the repairs within 30 days of receipt of the professional's or qualified employee's inspection report. If a permit is required in order to repair the gate, after the permit has been granted, the owner shall have a period of 30 days to engage a contractor or qualified employee and make the repairs, unless an extension of time is granted by the building department.

(3) (A) If the owner does not engage a contractor or use a qualified employee to repair the regulated gate within 30 days of receiving the necessary permits, ~~the~~The professional or qualified employee who performed the inspection shall notify the owner

and the building department regarding a regulated gate that needs repairs. The building department shall promptly notify the owner of their responsibility to repair the regulated gate within 30 days and the fact that an administrative fine may be imposed pursuant to this paragraph upon failure of the owner to comply with the notice.

(B) (i) If the repairs have not been completed within 30 days of the date when the building department sends the notice described in subparagraph (A), the owner may be assessed an administrative fine by the building department of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) per day until the repairs are completed, the regulated gate is inspected by a professional or qualified employee, and the fact of the regulated gate's repair and compliance with this section is reported to the building department, unless an extension of time is granted by the building department. The building department may also recover its reasonable regulatory costs of enforcement of this part from the owner.

(ii) The proceeds of an administrative fine or regulatory cost assessed pursuant to this paragraph shall be deposited into the treasury of the local government.

(iii) An owner who is assessed an administrative fine or regulatory cost pursuant to this subparagraph may contest the assessment as provided in subdivision (b) of Section 53069.4 of the Government Code.

(g) A regulated gate that fails to comply with this part 30 days after the owner of the gate has been notified of the violation pursuant to paragraph (3) of subdivision (f) is a public nuisance pursuant to Title 2 (commencing with Section 3490) of Part 3.

(h) A district attorney, county council, or city attorney may file a complaint in a court of competent jurisdiction for injunctive relief, or seeking a civil penalty, against an owner of a regulated gate for a violation of this part.

(i) This section does not affect any of the following:

(1) A property owner's legal responsibility to maintain their property in a safe condition and any liability the owner has pursuant to existing law for injuries caused by a dangerous condition on their property.

(2) The ability of a building department to inspect real property for compliance with applicable state and local laws and ordinances, oversee local code enforcement activities, interpret state and local building code requirements, direct the code adoption process, and enforce applicable state and local laws and ordinances that govern construction.

(3) The ability of the legislative body of a city, county, or city and county to adopt any ordinance consistent with this section.

(j) (1) For regulated gates in existence as of January 1, 2025, this section applies only to regulated gates:

(A) on private or public elementary, middle school, and high school grounds

(B) in local or state parks.

(2) For regulated gates installed on or after January 1, 2025, inspections by a professional or qualified employee as required by subdivision (1), subsection (b) of this section shall be completed upon installation, and every 10 years thereafter.

**SEC. 3.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.