

Assembly Bill No. 231

Passed the Assembly September 10, 2013

Chief Clerk of the Assembly

Passed the Senate September 9, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 25100, 25110, and 26835 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL’S DIGEST

AB 231, Ting. Firearms: criminal storage.

Existing law establishes the offenses of criminal storage of a firearm in the first degree, when a person keeps a loaded firearm within any premises under his or her custody or control, the person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or guardian, and a child obtains access to a person’s loaded firearm resulting in death or great bodily injury, as specified, and criminal storage of a firearm in the 2nd degree, when under those circumstances, the child obtains access to the firearm resulting in injury other than great bodily injury or the firearm is carried off premises, as specified. Existing law makes the first degree offense punishable as a felony or misdemeanor with specified penalties and makes the 2nd degree offense punishable as a misdemeanor with specified penalties.

This bill would establish the offense of criminal storage of a firearm in the 3rd degree, when a person keeps a loaded firearm within any premises under his or her custody or control and negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian, unless reasonable action is taken by the person to secure the firearm against access by the child. The bill would make the offense punishable as a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

Existing law requires a firearms dealer to conspicuously post specified warnings in the dealer’s licensed premises, including, among others, warnings regarding the criminal storage of firearms and the penalties for those offenses.

This bill would make conforming changes to those required warnings to reflect the offense of criminal storage of a firearm in the 3rd degree.

This bill would incorporate changes to Section 25100 of the Penal Code proposed by SB 363 that would become operative if this bill and SB 363 are both chaptered and this bill is chaptered last. The bill would also incorporate changes to Section 26835 of the Penal Code proposed by SB 299 that would become operative if this bill and SB 299 are both chaptered and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 25100 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

(c) Except as provided in Section 25105, a person commits the crime of “criminal storage of a firearm in the third degree” if the person keeps any loaded firearm within any premises that are under the person’s custody or control and negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian, unless reasonable action is taken by the person to secure the firearm against access by the child.

SEC. 1.5. Section 25100 of the Penal Code is amended to read:

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

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

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(3) The child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person, or the person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes death or great bodily injury to himself or herself or any other person.

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

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

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

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

or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself or herself or any other person, or carries the firearm either to a public place or in violation of Section 417.

(c) Except as provided in Section 25105, a person commits the crime of “criminal storage of a firearm in the third degree” if the person keeps any loaded firearm within any premises that are under the person’s custody or control and negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian, unless reasonable action is taken by the person to secure the firearm against access by the child.

SEC. 2. Section 25110 of the Penal Code is amended to read:

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

(b) Criminal storage of a firearm in the second degree is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

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

SEC. 3. Section 26835 of the Penal Code is amended to read:

26835. A licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(a) “IF YOU KEEP A LOADED 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.”

(b) “IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, 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.”

(c) “IF YOU KEEP ANY 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 TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.”

(d) “IF YOU NEGLIGENTLY STORE OR LEAVE A LOADED 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 FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.”

(e) “DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.”

(f) “FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL

BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.”

(g) “NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.”

SEC. 3.5. Section 26835 of the Penal Code is amended to read:

26835. A licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(a) “IF YOU KEEP A LOADED 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.”

(b) “IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, 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.”

(c) “IF YOU KEEP ANY 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 TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.”

(d) “IF YOU NEGLIGENTLY STORE OR LEAVE A LOADED 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 FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.”

(e) “DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.”

(f) “FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.”

(g) “NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.”

(h) “IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN SEVEN DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN.”

(i) “IF YOU FALSELY REPORT THAT A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU FACE CRIMINAL PROSECUTION AND LOSS OF YOUR RIGHT TO POSSESS A FIREARM OR AMMUNITION FOR 10 YEARS.”

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 25100 of the Penal Code proposed by both this bill and Senate Bill 363. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 25100 of the Penal Code, and (3) this bill is enacted after Senate Bill 363, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 26835 of the Penal Code proposed by both this bill and Senate Bill 299. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 26835 of the Penal Code, and (3) this bill is enacted after Senate Bill 299, in which case Section 3 of this bill shall not become operative.

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

Approved _____, 2013

Governor