

Senate Bill No. 71

Passed the Senate September 11, 2003

Secretary of the Senate

Passed the Assembly September 9, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 221.5, 37631, 41840, 48980, and 51851 of, to add Chapter 5.6 (commencing with Section 51930) to Part 28 of, to repeal Sections 51201.5, 51229, 51229.5, 51229.8, and 51240 of, to repeal Article 6 (commencing with Section 51550) of Chapter 4 of Part 28 of, and to repeal Article 11 (commencing with Section 51820) of Chapter 5 of Part 28 of, the Education Code, relating to instruction.

LEGISLATIVE COUNSEL'S DIGEST

SB 71, Kuehl. Education: sexual health and HIV/AIDS prevention instruction.

(1) Existing law contains various provisions relating to the instruction in the public schools on AIDS prevention, venereal disease and other sexually transmitted diseases, sex, and abstinence from sexual activity, the surrender of physical custody of a minor child 72 hours or younger, and the manner in which parents or guardians may excuse their child from this instruction.

This bill would consolidate those provisions by establishing the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act. The act would, among other things, authorize school districts to provide comprehensive sexual health education, as defined, in any kindergarten to grade 12, inclusive, and to ensure that all pupils in grades 7 to 12, inclusive, receive HIV/AIDS prevention education, as defined. The bill would also make conforming changes to related provisions of law and make technical, nonsubstantive changes to some of those provisions.

(2) This bill would incorporate additional changes to Section 48980 of the Education Code, proposed by AB 300, to be operative only if this bill and AB 300 are both enacted and become effective on or before January 1, 2004, and this bill is enacted last.

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

SECTION 1. Section 221.5 of the Education Code is amended to read:

221.5. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and



elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.

(b) A school district may not prohibit a pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Chapter 5.6 (commencing with Section 51930) of Part 28.

(c) A school district may not require a pupil of one sex to enroll in a particular class or course, unless the same class or course is also required of a pupil of the opposite sex.

(d) A school counselor, teacher, instructor, administrator, or aide may not, on the basis of the sex of a pupil, offer vocational or school program guidance to a pupil of one sex that is different from that offered to a pupil of the opposite sex or, in counseling a pupil, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to a pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade 7 so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

SEC. 2. Section 37631 of the Education Code is amended to read:

37631. The courses of instruction offered at a school maintained pursuant to this chapter shall meet all applicable requirements of law, including the requirements prescribed by Chapter 2 (commencing with Section 51200) of Part 28 relating to physical education and Chapter 5.6 (commencing with Section 51930) of Part 28. For these purposes the instructional program shall be designed to provide at least the overall equivalent in instruction in each course of study required by law to be provided in kindergarten and grades 1 to 12, inclusive, upon the completion by a pupil of the work prescribed for any particular grade.

SEC. 3. Section 41840 of the Education Code is amended to read:



41840. A school district or county superintendent of schools may only claim average daily attendance for apportionment purposes for schools or classes maintained for adults in correctional facilities if those classes meet the requirements of Section 41976. In addition, any of those classes offered pursuant to paragraph (10) of subdivision (a) of Section 41976 shall meet the requirements of Section 51934, 51202, or 51203, as the case may be.

SEC. 4. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, and 51938 and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification shall also advise the parents and guardians of all pupils attending a school within the district of the schedule of minimum days and pupil-free staff development days, and if any minimum or pupil-free staff development days are scheduled thereafter, the governing board shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options including, but not limited to, United States Savings Bonds.

(e) Commencing with the 2000–01 school year, and each school year thereafter, the notification shall advise the parent or guardian of the pupil that, commencing with the 2003–04 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the high school exit examination administered pursuant to Chapter 8 (commencing with Section 60850) of Part 33. The notification shall include, at



a minimum, the date of the examination, the requirements for passing the examination, and shall inform the parents and guardians regarding the consequences of not passing the examination and shall inform parents and guardians that passing the examination is a condition of graduation.

(f) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(g) The notification shall also include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

(h) The notification shall include a copy of the written policy of the school district adopted pursuant to Section 51870.5 regarding access by pupils to Internet and online sites.

(i) The notification shall advise the parent or guardian of all existing statutory attendance options and local attendance options available in the school district. That notification shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. That notification shall also include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the existing statutory attendance options including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The department shall produce this portion of the notification and shall distribute it to all school districts.

(j) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.



(k) The notification shall advise the parent or guardian that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

(l) The notification shall advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52244.

SEC. 4.5. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, and 51938 and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification shall also advise the parents and guardians of all pupils attending a school within the district of the schedule of minimum days and pupil-free staff development days, and if any minimum or pupil-free staff development days are scheduled thereafter, the governing board shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options, including, but not limited to, United States savings bonds.

(e) Commencing with the 2000–01 school year, and each school year thereafter, the notification shall advise the parent or guardian of the pupil that, commencing with the 2003–04 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the high school exit examination administered pursuant to Chapter 8 (commencing



with Section 60850) of Part 33. The notification shall include, at a minimum, the date of the examination, the requirements for passing the examination, and shall inform the parents and guardians regarding the consequences of not passing the examination and shall inform parents and guardians that passing the examination is a condition of graduation.

(f) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(g) The notification shall also include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

(h) The notification shall include a copy of the written policy of the school district adopted pursuant to Section 51870.5 regarding access by pupils to Internet and online sites.

(i) The notification shall advise the parent or guardian of all existing statutory attendance options and local attendance options available in the school district. That notification shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. That notification shall also include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the existing statutory attendance options, including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The department shall produce this portion of the notification and shall distribute it to all school districts.

(j) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.



(k) The notification shall advise the parent or guardian that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

(l) The notification shall advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52244.

SEC. 5. Section 51201.5 of the Education Code is repealed.

SEC. 6. Section 51229 of the Education Code is repealed.

SEC. 7. Section 51229.5 of the Education Code is repealed.

SEC. 8. Section 51229.8 of the Education Code is repealed.

SEC. 9. Section 51240 of the Education Code is repealed.

SEC. 10. Article 6 (commencing with Section 51550) of Chapter 4 of Part 28 of the Education Code is repealed.

SEC. 11. Article 11 (commencing with Section 51820) of Chapter 5 of Part 28 of the Education Code is repealed.

SEC. 12. Section 51851 of the Education Code is amended to read:

51851. A course of instruction in automobile driver education shall meet all of the following:

(a) Be of at least 2^{1/2} semester periods and shall be taught by a qualified instructor.

(b) Provide the opportunity for pupils to take driver education within the regular schoolday, and within the regular academic year, as defined in Section 37250. Additional classes may be offered at the discretion of the local school district governing board, the county superintendent of schools, California Youth Authority, and the State Department of Education, to accommodate the pupils who have failed or who cannot otherwise enroll in the regular schoolday program. For purposes of this section, the regular schoolday shall be that time during which classes are maintained in the courses of instruction provided for in Chapter 1 (commencing with Section 51000), Chapter 2 (commencing with Section 51200), Article 1 (commencing with Section 51500), Article 2 (commencing with Section 51510), Article 3 (commencing with Section 51520), and Article 4 (commencing with Section 51530) of Chapter 4, and Chapter 5.6



(commencing with Section 51930) of this part, and Chapter 2 (commencing with Section 58400) of Part 31.

(c) Be completed by the pupil within the academic year or summer session in which it was begun.

SEC. 13. Chapter 5.6 (commencing with Section 51930) is added to Part 28 of the Education Code, to read:

CHAPTER 5.6. CALIFORNIA COMPREHENSIVE SEXUAL HEALTH AND HIV/AIDS PREVENTION EDUCATION ACT

Article 1. General Provisions

51930. (a) This chapter shall be known and may be cited as the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act.

(b) The purposes of this chapter are as follows:

(1) To provide a pupil with the knowledge and skills necessary to protect his or her sexual and reproductive health from unintended pregnancy and sexually transmitted diseases.

(2) To encourage a pupil to develop healthy attitudes concerning adolescent growth and development, body image, gender roles, sexual orientation, dating, marriage, and family.

51931. For the purposes of this chapter, the following definitions apply:

(a) “Age appropriate” refers to topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

(b) “Comprehensive sexual health education” means education regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases.

(c) “English learner” means a pupil as described in subdivision (a) of Section 306.

(d) “HIV/AIDS prevention education” means instruction on the nature of HIV/AIDS, methods of transmission, strategies to reduce the risk of human immunodeficiency virus (HIV) infection, and social and public health issues related to HIV/AIDS. For the



purposes of this chapter, “HIV/AIDS prevention education” is not comprehensive sexual health education.

(e) “Instructors trained in the appropriate courses” means instructors with knowledge of the most recent medically accurate research on human sexuality, pregnancy, and sexually transmitted diseases.

(f) “Medically accurate” means verified or supported by research conducted in compliance with scientific methods and published in peer-reviewed journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

(g) “School district” includes county boards of education, county superintendents of schools, the California School for the Deaf, and the California School for the Blind.

51932. (a) This chapter does not apply to description or illustration of human reproductive organs that may appear in a textbook, adopted pursuant to law, on physiology, biology, zoology, general science, personal hygiene, or health.

(b) This chapter does not apply to instruction or materials that discuss gender, sexual orientation, or family life and do not discuss human reproductive organs and their functions.

Article 2. Authorized Comprehensive Sexual Health Education

51933. (a) School districts may provide comprehensive sexual health education, consisting of age-appropriate instruction, in any kindergarten to grade 12, inclusive, using instructors trained in the appropriate courses.

(b) A school district that elects to offer comprehensive sexual health education pursuant to subdivision (a), whether taught by school district personnel or outside consultants, shall satisfy all of the following criteria:

(1) Instruction and materials shall be age appropriate.

(2) All factual information presented shall be medically accurate and objective.



(3) Instruction shall be made available on an equal basis to a pupil who is an English learner, consistent with the existing curriculum and alternative options for an English learner pupil as otherwise provided in this code.

(4) Instruction and materials shall be appropriate for use with pupils of all races, genders, sexual orientations, ethnic and cultural backgrounds, and pupils with disabilities.

(5) Instruction and materials shall be accessible to pupils with disabilities, including, but not limited to, the provision of a modified curriculum, materials and instruction in alternative formats, and auxiliary aids.

(6) Instruction and materials shall encourage a pupil to communicate with his or her parents or guardians about human sexuality.

(7) Instruction and materials shall teach respect for marriage and committed relationships.

(8) Commencing in grade 7, instruction and materials shall teach that abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy, teach that abstinence from sexual activity is the only certain way to prevent sexually transmitted diseases, and provide information about the value of abstinence while also providing medically accurate information on other methods of preventing pregnancy and sexually transmitted diseases.

(9) Commencing in grade 7, instruction and materials shall provide information about sexually transmitted diseases. This instruction shall include how sexually transmitted diseases are and are not transmitted, the effectiveness and safety of all federal Food and Drug Administration (FDA) approved methods of reducing the risk of contracting sexually transmitted diseases, and information on local resources for testing and medical care for sexually transmitted diseases.

(10) Commencing in grade 7, instruction and materials shall provide information about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy, including, but not limited to, emergency contraception.

(11) Commencing in grade 7, instruction and materials shall provide pupils with skills for making and implementing responsible decisions about sexuality.



(12) Commencing in grade 7, instruction and materials shall provide pupils with information on the law on surrendering physical custody of a minor child 72 hours or younger, pursuant to Section 1255.7 of the Health and Safety Code and Section 271.5 of the Penal Code.

(c) A school district that elects to offer comprehensive sexual health education pursuant to subdivision (a) earlier than grade 7 may provide age appropriate and medically accurate information on any of the general topics contained in paragraphs (8) to (12), inclusive, of subdivision (b).

(d) If a school district elects to offer comprehensive sexual health education pursuant to subdivision (a), whether taught by school district personnel or outside consultants, the school district shall comply with the following:

(1) Instruction and materials may not teach or promote religious doctrine.

(2) Instruction and materials may not reflect or promote bias against any person on the basis of any category protected by Section 220.

Article 3. Required HIV/AIDS Prevention Education

51934. (a) A school district shall ensure that all pupils in grades 7 to 12, inclusive, receive HIV/AIDS prevention education from instructors trained in the appropriate courses. Each pupil shall receive this instruction at least once in junior high or middle school and at least once in high school.

(b) HIV/AIDS prevention education, whether taught by school district personnel or outside consultants, shall satisfy all of the criteria set forth in paragraphs (1) to (6), inclusive, of subdivision (b) and paragraphs (1) and (2) of subdivision (d) of Section 51933, shall accurately reflect the latest information and recommendations from the United States Surgeon General, the federal Centers for Disease Control and Prevention, and the National Academy of Sciences, and shall include the following:

(1) Information on the nature of HIV/AIDS and its effects on the human body.

(2) Information on the manner in which HIV is and is not transmitted, including information on activities that present the highest risk of HIV infection.



(3) Discussion of methods to reduce the risk of HIV infection. This instruction shall emphasize that sexual abstinence, monogamy, the avoidance of multiple sexual partners, and abstinence from intravenous drug use are the most effective means for HIV/AIDS prevention, but shall also include statistics based upon the latest medical information citing the success and failure rates of condoms and other contraceptives in preventing sexually transmitted HIV infection, as well as information on other methods that may reduce the risk of HIV transmission from intravenous drug use.

(4) Discussion of the public health issues associated with HIV/AIDS.

(5) Information on local resources for HIV testing and medical care.

(6) Development of refusal skills to assist pupils in overcoming peer pressure and using effective decisionmaking skills to avoid high-risk activities.

(7) Discussion about societal views on HIV/AIDS, including stereotypes and myths regarding persons with HIV/AIDS. This instruction shall emphasize compassion for persons living with HIV/AIDS.

Article 4. In-Service Training

51935. (a) A school district shall cooperatively plan and conduct in-service training for all school district personnel that provide HIV/AIDS prevention education, through regional planning, joint powers agreements, or contract services.

(b) In developing and providing in-service training, a school district shall cooperate and collaborate with the teachers of the district who provide HIV/AIDS prevention education and with the State Department of Education.

(c) In-service training shall be conducted periodically to enable school district personnel to learn new developments in the scientific understanding of HIV/AIDS. In-service training shall be voluntary for school district personnel who have demonstrated expertise or received in-service training from the State Department of Education or federal Centers for Disease Control and Prevention.



(d) A school district may expand HIV/AIDS in-service training to cover the topic of comprehensive sexual health education in order for school district personnel who provide comprehensive sexual health education to learn new developments in the scientific understanding of sexual health.

51936. School districts may contract with outside consultants with expertise in comprehensive sexual health education or HIV/AIDS prevention education, or both, including those who have developed multilingual curricula or curricula accessible to persons with disabilities, to deliver the instruction or to provide training for school district personnel.

Article 5. Notice and Parental Excuse

51937. It is the intent of the Legislature to encourage pupils to communicate with their parents or guardians about human sexuality and HIV/AIDS and to respect the rights of parents or guardians to supervise their children's education on these subjects. The Legislature intends to create a streamlined process to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV/AIDS prevention education, and, if they wish, to excuse their children from participation in all or part of that instruction or evaluation. The Legislature recognizes that while parents and guardians overwhelmingly support medically accurate, comprehensive sex education, parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children.

51938. A parent or guardian of a pupil has the right to excuse their child from all or part of comprehensive sexual health education, HIV/AIDS prevention education, and assessments related to that education, as follows:

(a) At the beginning of each school year, or, for a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, each school district shall notify the parent or guardian of each pupil about instruction in comprehensive sexual health education and HIV/AIDS prevention education and research on pupil health behaviors and risks planned for the coming year. The notice shall include all of the following:



(1) Advise the parent or guardian that written and audio visual educational materials used in comprehensive sexual health education and HIV/AIDS prevention education are available for inspection.

(2) Advise the parent or guardian whether the comprehensive sexual health education or HIV/AIDS prevention education will be taught by school district personnel or by outside consultants.

(3) Information explaining the parent's or guardian's right to request a copy of this chapter.

(4) Advise the parent or guardian that the parent or guardian may request in writing that his or her child not receive comprehensive sexual health education or HIV/AIDS prevention education.

(b) Notwithstanding Section 51513, anonymous, voluntary, and confidential research and evaluation tools to measure pupils' health behaviors and risks, including tests, questionnaires, and surveys containing age appropriate questions about the pupil's attitudes concerning or practices relating to sex may be administered to any pupil in grades 7 to 12, inclusive, if the parent or guardian is notified in writing that this test, questionnaire, or survey is to be administered and the pupil's parent or guardian is given the opportunity to review the test, questionnaire, or survey and to request in writing that his or her child not participate.

51939. (a) A pupil may not attend any class in comprehensive sexual education or HIV/AIDS prevention education, or participate in any anonymous, voluntary, and confidential test, questionnaire, or survey on pupil health behaviors and risks, if the school has received a written request from the pupil's parent or guardian excusing the pupil from participation.

(b) A pupil may not be subject to disciplinary action, academic penalty, or other sanction if the pupil's parent or guardian declines to permit the pupil to receive comprehensive sexual health education or HIV/AIDS prevention education or to participate in anonymous, voluntary, and confidential tests, questionnaires, or surveys on pupil health behaviors and risks.

(c) While comprehensive sexual health education, HIV/AIDS prevention education, or anonymous, voluntary, and confidential test, questionnaire, or survey on pupil health behaviors and risks is being administered, an alternative educational activity shall be



made available to pupils whose parents or guardians have requested that they not receive the instruction or participate in the test, questionnaire, or survey.

SEC. 14. Section 4.5 of this bill incorporates amendments to Section 48980 of the Education Code proposed by this bill and AB 300. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 48980 of the Education Code, and (3) this bill is enacted after AB 300, in which case Section 48980 of the Education Code, as amended by AB 300, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.



Approved _____, 2003

Governor

