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VETO

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Bill No: SB 541  
Author: Menjivar (D), et al.  
Amended: 9/1/23  
Vote: 27

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SENATE EDUCATION COMMITTEE: 5-2, 3/29/23  
AYES: Newman, Cortese, Glazer, McGuire, Smallwood-Cuevas  
NOES: Ochoa Bogh, Wilk

SENATE HEALTH COMMITTEE: 10-1, 4/12/23  
AYES: Eggman, Glazer, Gonzalez, Hurtado, Limón, Menjivar, Roth, Rubio,  
Wahab, Wiener  
NOES: Nguyen  
NO VOTE RECORDED: Grove

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/23  
AYES: Portantino, Ashby, Bradford, Wahab, Wiener  
NOES: Jones, Seyarto

SENATE FLOOR: 31-8, 5/31/23  
AYES: Allen, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero,  
Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón,  
McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Rubio, Skinner,  
Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener  
NOES: Alvarado-Gil, Dahle, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk  
NO VOTE RECORDED: Grove

SENATE FLOOR: 30-9, 9/11/23  
AYES: Allen, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Cortese,  
Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón, McGuire,  
Menjivar, Min, Newman, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-  
Cuevas, Stern, Umberg, Wahab, Wiener  
NOES: Alvarado-Gil, Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto,  
Wilk  
NO VOTE RECORDED: Caballero

ASSEMBLY FLOOR: 65-11, 9/7/23 - See last page for vote

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**SUBJECT:** Sexual health: contraceptives

**SOURCE:** Adolescent Health Working Group  
Black Women for Wellness Action Project  
Citizens for Choice  
Essential Access Health  
Generation Up  
Unite for Reproductive & Gender Equity

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**DIGEST:** This bill requires all public high schools to make condoms available to students by the start of the 2024-25 school year, and requires schools to provide information to students on the availability of condoms, as well as other sexual health information. This bill prohibits public schools from preventing distribution of condoms or preventing a school-based health center from making condoms available and easily accessible to students at the school-based health center site. This bill also prohibits retailers from restricting sales of nonprescription contraception on the basis of age.

**ANALYSIS:**

Existing law:

- 1) Establishes the California Healthy Youth Act (CHYA), which requires local educational agencies (LEAs) to provide comprehensive sexual health and HIV prevention instruction to all students in grades 7 to 12, at least once in middle school and once in high school. (Education Code (EC) § 51933)
- 2) Authorizes an LEA to contract with outside consultants or guest speakers, including those who have developed multilingual curricula or curricula accessible to persons with disabilities, to deliver comprehensive sexual health education and HIV prevention education or to provide training for school district personnel. All outside consultants and guest speakers shall have expertise in comprehensive sexual health education and HIV prevention education and have knowledge of the most recent medically accurate research on the relevant topic or topics covered in their instruction. (EC § 51936)

- 3) Requires that pupils in grades 7 to 12, inclusive, receive comprehensive sexual health education at least once in junior high or middle school and at least once in high school. (EC § 51934)
- 4) Requires that the instruction and related instructional materials be, among other things:
  - a) Age appropriate.
  - b) Medically accurate and objective.
  - c) Appropriate for use with pupils of all races, genders, sexual orientations, and ethnic and cultural backgrounds, pupils with disabilities, and English learners.
  - d) 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.
  - e) Accessible to pupils with disabilities. (EC § 51934)
- 5) Authorizes an LEA to provide comprehensive sexual health education and HIV prevention education earlier than grade seven using instructors trained in the appropriate courses and age-appropriate and medically-accurate information. (EC § 51933)
- 6) Requires LEAs to provide parents and guardians with a notice 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 the following:
  - a) About instruction in comprehensive sexual health education and HIV prevention education and research on pupil health behaviors and risks planned for the coming year.
  - b) Advise the parent or guardian that the educational materials used in sexual health education are available for inspection.
  - c) Advise the parent or guardian whether the comprehensive sexual health education or HIV prevention education will be taught by school district personnel or by outside consultant, as provided.

- d) Advise the parent or guardian that the parent or guardian has the right to excuse their child from comprehensive sexual health education and HIV prevention education and that in order to excuse their child they must state their request in writing to the LEA. (EC § 51938)
- 7) Provides that the parent or guardian of a pupil has the right to excuse their child from all or part of that education, including related assessments, through a passive consent (“opt-out”) process. (EC § 51938)

This bill:

- 1) Requires, on or before the start of the 2024–25 school year, each public school to make condoms available to all pupils in grades 9 to 12, inclusive, free of charge, and requires related information to be made available to students.
- 2) Requires each public school serving any of grades 7 to 12, inclusive, to allow condoms to be made available during the course of, or in connection with, educational or public health programs and initiatives, as specified.
- 3) Requires public schools, serving any of grades 7 to 12, to allow a school-based health center to make internal and external condoms available and easily accessible to pupils at the school-based health center site.
- 4) Prohibits a retail establishment from refusing to furnish nonprescription contraception to a person solely on the basis of age by means of any conduct, including, but not limited to, requiring the customer to present identification for purposes of demonstrating their age, unless the contraception is otherwise subject to restriction on the basis of age. Specifies that penalties do not apply for non-compliance.

### Comments

- 1) *Need for this bill.* According to the author “ By requiring free condoms in all California high schools, we are empowering the youth who decide to become sexually active to protect themselves and their partners from STIs, while also removing barriers that potentially shame them and lead to unsafe sex. Further, requiring the Family PACT program to cover HPV vaccinations for ages 12-18 will decrease instances of patients delaying vaccination or becoming discouraged after being turned away. These programs can instill safe sexual habits among youth, protecting themselves now and into adulthood.”

- 2) *California Healthy Youth Act*. The CHYA took effect in 2003 and was initially known as the Comprehensive Sexual Health and HIV/AIDS Prevention Education Act. Originally, the act LEAs to provide comprehensive sexual health education in any grade, including kindergarten, so long as it consisted of age-appropriate instruction and used instructors trained in the appropriate courses. Beginning in 2016 with AB 329 (Weber, 2015), the act was renamed the CHYA and, for the first time, required LEAs, excluding charter schools, to provide comprehensive sexual health education and HIV prevention education to all students at least once in middle school and at least once in high school. Charter schools must also provide that same instruction. From its inception in 2003 through today, the CHYA has always afforded parents the right to opt their child out of a portion, or all, of the instruction and required LEAs to notify parents and guardians of this right. Parents and guardians can exercise this right by informing the LEA in writing of their decision.
- 3) *Comprehensive sexual health education in lower grades*. Comprehensive sexual health education in lower grades has always been, and remains, optional. Under existing law, for grades 6 and below, an LEA must “opt-in” to offer that instruction to students. The LEA is then required by law to notify parents and guardians of their right to “opt-out” their child, whether in part or completely. All instruction and materials in grades K–6 must meet the instructional criteria or baseline requirements of the CHYA and the content that is required in grades 7–12 may be also be included in an age-appropriate way in earlier grades.
- 4) *2019 Revision of the Health Education Framework*. On May 8, 2019, the State Board of Education (SBE) officially adopted the 2019 Health Education Curriculum Framework for California Public Schools (the Health Education Framework) after over two years of development. The Health Education Framework is aligned to the 2008 California Health Education Content Standards, which support the development of knowledge, skills, and attitudes in eight overarching standards: (1) essential health concepts; (2) analyzing health influences; (3) accessing valid health information; (4) interpersonal communication; (5) decision making; (6) goal setting; (7) practicing health-enhancing behaviors; and (8) health promotion in six content areas of health education, including sexual health.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to Assembly Appropriations Committee, “Ongoing Proposition 98 General Fund costs, of an unknown amount but potentially in the low millions of dollar annually, to schools to purchase condoms and inform students of the

condoms' availability annually. One-time costs, of an unknown amount, to buy and install tamper-proof dispensers in certain situations and to post a notice with certain information. Costs ultimately would depend on how many condoms schools make available and the number of schools installing tamper-proof dispensers. According to the California Department of Education, 1.9 million students enrolled in grades nine through 12 in over 4,000 schools in the 2022-23 school year. According to Planned Parenthood, external condoms usually cost less than \$1 each if bought in packs of 12 or more on the private market. Internal condoms cost significantly more. The California Department of Public Health (CDPH) provides discounted rates to certain entities of external condoms, which are \$100 per 1,000, and internal condoms, which are \$730 per 500. Tamper-proof condom dispensers tend to cost in the low hundreds of dollars each. If each school serving students in grades nine through 12 provided 1,000 external condoms and 500 internal condoms at the CDPH rates, and one tamper-proof dispenser, costs would total \$4 million statewide. Costs could be less or more depending on the number of condoms provided, the cost of those condoms, and the locations of those condoms. If the Commission on State Mandates (CSM) determines the bill's requirements to be a reimbursable state mandate, the state would need to reimburse these costs to local educational agencies or provide funding through the K-12 Mandate Block Grant. State law requiring schools to provide free menstrual products recently was determined by the CSM to be a state mandated cost and the cost of the mandate was added to the K-12 Mandate Block Grant. Ongoing General Fund costs of an unknown amount, potentially in the low tens of millions of dollars, for FPACT programs to provide coverage for immunization against HPV to certain individuals. Costs would ultimately depend on the number of individuals accessing the benefit. If FPACT programs applied to the federal Vaccines for Children program, these costs would be largely offset by a 90% federal match."

**SUPPORT:** (Verified 10/20/23)

Adolescent Health Working Group (co-source)  
Black Women for Wellness Action Project (co-source)  
Citizens for Choice (co-source)  
Essential Access Health (co-source)  
Generation Up (co-source)  
Unite for Reproductive & Gender Equity (co-source)  
Access Reproductive Justice  
ACLU California Action  
ACT for Women and Girls  
Aids Healthcare Foundation  
Alameda County Board of Supervisors

American College of Obstetricians and Gynecologists District IX  
California Academy of Family Physicians  
California Coalition for Youth  
California Faculty Association  
California Federation of Teachers  
California Health+Advocates  
California Nurse Midwives Association  
California School-Based Health Alliance  
California Teachers Association  
California Transgender Advisory Council - Office of Lieutenant Governor  
California Women's Law Center  
Capslo the Center for Health & Prevention  
Coachman Moore and Associates  
Community Clinic Association of Los Angeles County  
DPA Health  
Feminist Majority Foundation  
Genders & Sexualities Alliance Network  
GLIDE  
Los Angeles LGBT Center  
NARAL Pro-choice California  
National Center for Youth Law  
National Harm Reduction Coalition  
National Health Law Program  
Planned Parenthood Affiliates of California  
Radiant Health Centers  
Rainbow Pride Youth Alliance  
Realistic Education in Action Coalition to Foster Health  
San Francisco Aids Foundation  
The Los Angeles Trust for Children's Health  
Training in Early Abortion for Comprehensive Health Care  
UCLA Bixby Center on Population and Reproductive Health  
Women's Foundation of California, Dr. Beatriz Maria Solis Policy Institute  
Women's Health Specialists

**OPPOSITION:** (Verified 10/20/23)

California Family Council  
California Policy Center

**ARGUMENTS IN SUPPORT:** According to the California School-Based Health Alliance writes:

More than 325,000 Californians were infected with syphilis, chlamydia, or gonorrhea in 2019. Young people, and in particular youth of color, are disproportionately impacted. Statewide data indicate over half of all STIs in the state are experienced among California youth ages 15 – 24 years old. Young people in this age group make up more than five out of every 10 chlamydia cases in California, and more than 87% are youth of color. Condoms are an effective tool to reduce STI transmission, but condom use among sexually active teens has declined over the last decade. The CDC's Youth Risk Behavior Surveillance System shows that in 2019, an average of 20% of California high school students were sexually active and 47% of those students did not use condoms during their last sexual intercourse. Teens have long reported facing multiple barriers to accessing condoms that deter them from seeking and securing the resources they need to protect themselves against STIs and unintended pregnancy. When barriers remain, youth with low-incomes are often left without the option to regularly utilize condoms to help protect their health and prevent an unintended pregnancy from occurring.

**ARGUMENTS IN OPPOSITION:** According to the California Family Council writes:

For the last decade or more this legislative body has been pushing condoms as the solution to sexually transmitted infections spreading among our youth. As the STI infection rate continued to rise, so did the insistence on easier access to condoms and information about safe sex at younger and younger ages. This was the whole argument surrounding the CA Healthy Youth Act passed in 2015, which mandates comprehensive sex education in every school district. Now in 2023, we have an STI epidemic on our hands. According to the California Department of Public Health, STIs are at epidemic levels. A 2020 report showed a 320% increase in syphilis over the past 10 years. Gonorrhea is up 190 percent. Despite these numbers, you still insist telling kids condoms will protect them. Why? Did you know condoms don't protect people from STIs such as herpes, genital warts, syphilis, and monkeypox, which can spread by skin-to-skin contact? Don't you think it is time to tell young people the truth, that those with the most fulfilling and healthy sex lives are those who treat sex as a special and intimate act to be shared in an opposite-sex, monogamous marriage? STIs can only thrive in a hook-up culture where sex is meaningless and done for fun with multiple



partners. Handing out free condoms perpetuates such a culture. Please consider different options.

**GOVERNOR'S VETO MESSAGE:**

This bill requires all public high schools to make free condoms available to students and would prohibit retailers from refusing to sell condoms to youth.

While evidence-based strategies, like increasing access to condoms, are important to supporting improved adolescent sexual health, this bill would create an unfunded mandate to public schools that should be considered in the annual budget process.

In partnership with the Legislature, we enacted a budget that closed a shortfall of more than \$30 billion through balanced solutions that avoided deep program cuts and protected education, health care, climate, public safety, and social service programs that are relied on by millions of Californians. This year, however, the Legislature sent me bills outside of this budget process that, if all enacted, would add nearly \$19 billion of unaccounted costs in the budget, of which \$11 billion would be ongoing.

With our state facing continuing economic risk and revenue uncertainty, it is important to remain disciplined when considering bills with significant fiscal implications, such as this measure.

ASSEMBLY FLOOR: 65-11, 9/7/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Davies, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Rendon, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Waldron, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

NOES: Megan Dahle, Dixon, Flora, Vince Fong, Gallagher, Lackey, Mathis, Jim Patterson, Joe Patterson, Sanchez, Ta

NO VOTE RECORDED: Chen, Essayli, Hoover, Wallis

Prepared by: Kordell Hampton / ED. / (916) 651-4105  
10/25/23 10:52:43

\*\*\*\* **END** \*\*\*\*