

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN SENATE JUNE 24, 2010

AMENDED IN ASSEMBLY APRIL 28, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2541

Introduced by Assembly Members Portantino and Fletcher

February 19, 2010

An act to amend Sections 120130 ~~and 121022~~ *121022, and 121025* of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2541, as amended, Portantino. Reporting of certain communicable diseases.

Existing law establishes various communicable disease prevention and control programs. Existing law requires the State Department of Public Health to establish a list of reportable diseases and conditions and authorizes the department to adopt regulations requiring isolation or quarantine for any contagious, infectious, or communicable diseases, if necessary, for the protection of the public health.

Existing law requires the local health officer to report the listed diseases to the department, and requires that, within one year after the establishment of a state electronic laboratory reporting system, reports generated by a laboratory be submitted electronically in a manner specified by the department, except for reports of HIV infections. Existing law requires health care providers and laboratories to report cases of HIV infection to the local health officer using patient names.

This bill would delete the exemption from electronic reporting for HIV infections and would make conforming changes. This bill would ~~provide that~~ require health care providers and laboratories to report cases of HIV infection to the local health officer using patient names and set guidelines regarding such reports. To the extent that this bill would impose additional requirements on a local public health officer and because this bill changes the definition of a crime, this bill would impose a state-mandated local program.

Existing law prohibits the disclosure of public health records relating to HIV and AIDS, and the information contained in those records, with specified exceptions for public health purposes, or pursuant to a written authorization. Existing law requires a disclosure of these records or information to include only the information necessary for the purpose of the disclosure, and to be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization. Existing law imposes civil penalties for the disclosure, whether negligent or willful and malicious, of the content of a confidential public health record, as defined, as well as specified criminal penalties, under certain circumstances.

This bill would expand information disclosure provisions applicable to the information contained in public health records relating to HIV and AIDS, including when the person who is the subject of the record is coinfecting with HIV/AIDS, tuberculosis, and a sexually transmitted disease, as specified. The bill would also increase the maximum civil penalties applicable for the disclosure of the content of a public health record, as specified.

This bill would incorporate additional changes to Section 120130 of the Health and Safety Code proposed by AB 2786, to be operative only if AB 2786 and this bill are both chaptered and become effective on or before January 1, 2011, 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 120130 of the Health and Safety Code
2 is amended to read:
3 120130. (a) The department shall establish a list of reportable
4 diseases and conditions. For each reportable disease and condition,
5 the department shall specify the timeliness requirements related
6 to the reporting of each disease and condition, and the mechanisms
7 required for, and the content to be included in, reports made
8 pursuant to this section. The list of reportable diseases and
9 conditions may include both communicable and noncommunicable
10 diseases. The list may include those diseases that are either known
11 to be, or suspected of being, transmitted by milk or milk-based
12 products. The list shall also include, but not be limited to,
13 diphtheria, listeria, salmonella, shigella, streptococcal infection in
14 food handlers or dairy workers, and typhoid. The list may be
15 modified at any time by the department, after consultation with
16 the California Conference of Local Health Officers. Modification
17 of the list shall be exempt from the administrative regulation and
18 rulemaking requirements of Chapter 3.5 (commencing with Section
19 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
20 and shall be implemented without being adopted as a regulation,
21 except that the revised list shall be filed with the Secretary of State
22 and printed in the California Code of Regulations as required under
23 subdivision (d). Those diseases listed as reportable shall be properly
24 reported as required to the department by the health officer.
25 (b) The department may from time to time adopt and enforce
26 regulations requiring strict or modified isolation, or quarantine,
27 for any of the contagious, infectious, or communicable diseases,
28 if in the opinion of the department the action is necessary for the
29 protection of the public health.
30 (c) The health officer may require strict or modified isolation,
31 or quarantine, for any case of contagious, infectious, or
32 communicable disease, when this action is necessary for the
33 protection of the public health.

1 (d) The list established pursuant to subdivision (a) and any
2 subsequent modifications shall be published in Title 17 of the
3 California Code of Regulations.

4 (e) Notwithstanding any other provision of law, no civil or
5 criminal penalty, fine, sanction, finding, or denial, suspension, or
6 revocation of licensure for any person or facility may be imposed
7 based upon a failure to provide the notification of a reportable
8 disease or condition that is required under this section, unless the
9 disease or condition that is required to be reported was printed in
10 the California Code of Regulations at least six months prior to the
11 date of the claimed failure to report.

12 (f) Commencing July 1, 2009, or within one year of the
13 establishment of a state electronic laboratory reporting system,
14 whichever is later, a report generated pursuant to this section, or
15 Section 121022, by a laboratory shall be submitted electronically
16 in a manner specified by the department. The department shall
17 allow laboratories that receive incomplete patient information to
18 report the name of the provider who submitted the request to the
19 local health officer.

20 (g) The department may through its Internet Web site and via
21 electronic mail advise out-of-state laboratories that are known to
22 the department to test specimens from California residents of the
23 new reporting requirements.

24 *SEC. 1.5. Section 120130 of the Health and Safety Code is*
25 *amended to read:*

26 120130. (a) The department shall establish a list of reportable
27 diseases and conditions. For each reportable disease and condition,
28 the department shall specify the timeliness requirements related
29 to the reporting of each disease and condition, and the mechanisms
30 required for, and the content to be included in, reports made
31 pursuant to this section. The list of reportable diseases and
32 conditions may include both communicable and noncommunicable
33 diseases. The list may include those diseases that are either known
34 to be, or suspected of being, transmitted by milk or milk-based
35 products. ~~The list shall also include, but not be limited to,~~
36 ~~diphtheria, listeria, salmonella, shigella, streptococcal infection in~~
37 ~~food handlers or dairy workers, and typhoid.~~ The list may be
38 modified at any time by the department, after consultation with
39 the California Conference of Local Health Officers. Modification
40 of the list shall be exempt from the administrative regulation and

1 rulemaking requirements of Chapter 3.5 (commencing with Section
2 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
3 and shall be implemented without being adopted as a regulation,
4 except that the revised list shall be filed with the Secretary of State
5 and printed in the California Code of Regulations as required ~~under~~
6 *pursuant to* subdivision ~~(d)~~ (e). Those diseases listed as reportable
7 shall be properly reported as required to the department by the
8 health officer.

9 *(b) The department shall establish a list of communicable*
10 *diseases and conditions for which clinical laboratories shall submit*
11 *a culture or a specimen to the local public health laboratory to*
12 *undergo characterization. The list shall set forth the conditions*
13 *under which the culture and specimen shall also be submitted to*
14 *the state public health laboratory to undergo further*
15 *characterization. The list may be modified at any time by the*
16 *department, after consultation with the California Conference of*
17 *Local Health Officers and the California Association of Public*
18 *Health Laboratory Directors. Both establishment and modification*
19 *of the list shall be exempt from the administrative regulation and*
20 *rulemaking requirements of Chapter 3.5 (commencing with Section*
21 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*
22 *and shall be implemented without being adopted as a regulation,*
23 *except that the initial list and any modifications shall be filed with*
24 *the Secretary of State and printed in the California Code of*
25 *Regulations as required pursuant to subdivision (e).*

26 ~~(b)~~

27 (c) The department may from time to time adopt and enforce
28 regulations requiring strict or modified isolation, or quarantine,
29 for any of the contagious, infectious, or communicable diseases,
30 if in the opinion of the department the action is necessary for the
31 protection of the public health.

32 ~~(e)~~

33 (d) The health officer may require strict or modified isolation,
34 or quarantine, for any case of contagious, infectious, or
35 communicable disease, when this action is necessary for the
36 protection of the public health.

37 ~~(d)~~

38 (e) ~~The list lists~~ established pursuant to ~~subdivision~~ *subdivisions*
39 (a) and (b) and any subsequent modifications shall be published
40 in Title 17 of the California Code of Regulations.

1 (e)
 2 (f) Notwithstanding any other provision of law, no civil or
 3 criminal penalty, fine, sanction, finding, or denial, suspension, or
 4 revocation of licensure for ~~any person or facility~~ *a licensed*
 5 *physician and surgeon or a clinical laboratory* may be imposed
 6 based upon a failure to provide the notification of a reportable
 7 disease or condition *or to provide the submission of a culture or*
 8 *specimen* that is required ~~under~~ *pursuant to* this section, unless the
 9 *name of the* disease or condition that is required to be reported *or*
 10 *for which the culture or specimen is required to be submitted* was
 11 printed in the California Code of Regulations *and the department*
 12 *notified the licensed physician and surgeon or clinical laboratory*
 13 *of the disease or condition* at least six months prior to the date of
 14 the claimed failure to report *or submit*.

15 (f)
 16 (g) Commencing July 1, 2009, or within one year of the
 17 establishment of a state electronic laboratory reporting system,
 18 whichever is later, a report generated pursuant to this section *or*
 19 *Section 121022* by a laboratory shall be submitted electronically
 20 in a manner specified by the department, ~~except that this electronic~~
 21 ~~reporting requirement shall not apply to reports of HIV infections.~~
 22 The department shall allow laboratories that receive incomplete
 23 patient information to report the name of the provider who
 24 submitted the request to the local health officer.

25 (g)
 26 (h) The department may ~~on~~, *through* its *Internet* Web site and
 27 via electronic mail, advise out-of-state laboratories that are known
 28 to the department to test specimens from California residents of
 29 the new reporting requirements.

30 SEC. 2. Section 121022 of the Health and Safety Code is
 31 amended to read:

32 121022. (a) To ensure knowledge of current trends in the HIV
 33 epidemic and to ensure that California remains competitive for
 34 federal HIV and AIDS funding, health care providers and
 35 laboratories shall report cases of HIV infection to the local health
 36 officer using patient names. Local health officers shall report
 37 unduplicated HIV cases by name to the department.

38 (b) (1) Health care providers and local health officers shall
 39 submit cases of HIV infection pursuant to subdivision (a) by courier
 40 service, United States Postal Service express mail or registered

1 mail, other traceable mail, person-to-person transfer, facsimile, or
2 electronically by a secure and confidential electronic reporting
3 system established by the department.

4 (2) This subdivision shall be implemented using the existing
5 resources of the department.

6 (c) The department and local health officers shall ensure
7 continued reasonable access to anonymous HIV testing through
8 alternative testing sites, as established by Section 120890, and in
9 consultation with HIV planning groups and affected stakeholders,
10 including representatives of persons living with HIV and health
11 officers.

12 (d) The department shall promulgate emergency regulations to
13 conform the relevant provisions of Article 3.5 (commencing with
14 Section 2641.5) of Chapter 4 of Title 17 of the California Code of
15 Regulations, consistent with this chapter, within one year of the
16 effective date of this section.

17 (e) Pursuant to Section 121025, reported cases of HIV infection
18 shall not be disclosed, discoverable, or compelled to be produced
19 in any civil, criminal, administrative, or other proceeding.

20 (f) State and local health department employees and contractors
21 shall be required to sign confidentiality agreements developed by
22 the department that include information related to the penalties for
23 a breach of confidentiality and the procedures for reporting a breach
24 of confidentiality, prior to accessing confidential HIV-related
25 public health records. Those agreements shall be reviewed annually
26 by either the department or the appropriate local health department.

27 (g) No person shall disclose identifying information reported
28 pursuant to subdivision (a) to the federal government, including,
29 but not limited to, any agency, employee, agent, contractor, or
30 anyone else acting on behalf of the federal government, except as
31 permitted under subdivision (b) of Section 121025.

32 (h) (1) Any potential or actual breach of confidentiality of
33 HIV-related public health records shall be investigated by the local
34 health officer, in coordination with the department, when
35 appropriate. The local health officer shall immediately report any
36 evidence of an actual breach of confidentiality of HIV-related
37 public health records at a city or county level to the department
38 and the appropriate law enforcement agency.

39 (2) The department shall investigate any potential or actual
40 breach of confidentiality of HIV-related public health records at

1 the state level, and shall report any evidence of such a breach of
2 confidentiality to an appropriate law enforcement agency.

3 (i) Any willful, negligent, or malicious disclosure of cases of
4 HIV infection reported pursuant to subdivision (a) shall be subject
5 to the penalties prescribed in Section 121025.

6 (j) Nothing in this section shall be construed to limit other
7 remedies and protections available under state or federal law.

8 *SEC. 3. Section 121025 of the Health and Safety Code is*
9 *amended to read:*

10 121025. (a) Public health records relating to human
11 immunodeficiency virus (HIV) or acquired immunodeficiency
12 syndrome (AIDS), containing personally identifying information,
13 that were developed or acquired by a state or local public health
14 ~~agencies~~ *agency*, or an agent of ~~such an~~ *that* agency, shall be
15 confidential and shall not be disclosed, except as otherwise
16 provided by law for public health purposes or pursuant to a written
17 authorization by the person who is the subject of the record or by
18 his or her guardian or conservator.

19 (b) In accordance with subdivision (f) of Section 121022, a state
20 or local public health ~~agencies~~ *agency*, or an agent of ~~such an~~ *that*
21 agency, may disclose personally identifying information in public
22 health records, as described in subdivision (a), to other local, state,
23 or federal public health agencies or to corroborating medical
24 researchers, when the confidential information is necessary to carry
25 out the duties of the agency or researcher in the investigation,
26 control, or surveillance of disease, as determined by the state or
27 local public health agency.

28 (c) ~~Any~~ *Except as provided in paragraphs (1) to (3), inclusive,*
29 *any* disclosure authorized by subdivision (a) or (b) shall include
30 only the information necessary for the purpose of that disclosure
31 and shall be made only upon agreement that the information will
32 be kept confidential and will not be further disclosed without
33 written authorization, as described in subdivision (a).

34 (1) *Notwithstanding any other provision of law, the following*
35 *disclosures shall be authorized for the purpose of enhancing*
36 *completeness of HIV/AIDS, tuberculosis, and sexually transmitted*
37 *disease coinfection reporting to the federal Centers for Disease*
38 *Control and Prevention (CDC):*

39 (A) *The local public health agency HIV surveillance staff may*
40 *further disclose the information to the health care provider who*

1 *provides HIV care to the HIV-positive person who is the subject*
2 *of the record for the purpose of assisting in compliance with*
3 *subdivision (a) of Section 121022.*

4 *(B) Local public health agency tuberculosis control staff may*
5 *further disclose the information to state public health agency*
6 *tuberculosis control staff, who may further disclose the information,*
7 *without disclosing patient identifying information, to the CDC, to*
8 *the extent the information is requested by the CDC and permitted*
9 *by subdivision (b), for purposes of the investigation, control, or*
10 *surveillance of HIV and tuberculosis coinfections.*

11 *(C) Local public health agency sexually transmitted disease*
12 *control staff may further disclose the information to state public*
13 *health agency sexually transmitted disease control staff, who may*
14 *further disclose the information, without disclosing patient*
15 *identifying information, to the CDC, to the extent it is requested*
16 *by the CDC, and permitted by subdivision (b), for the purposes of*
17 *the investigation, control, or surveillance of HIV and syphilis,*
18 *gonorrhea, or chlamydia coinfection.*

19 *(2) Notwithstanding any other provision of law, the following*
20 *disclosures shall be authorized for the purpose of facilitating*
21 *appropriate HIV/AIDS medical care and treatment:*

22 *(A) State public health agency HIV surveillance staff, AIDS*
23 *Drug Assistance Program staff, and care services staff may further*
24 *disclose the information to local public health agency staff, who*
25 *may further disclose the information to the HIV-positive person*
26 *who is the subject of the record, or the health care provider who*
27 *provides his or her HIV care, for the purpose of proactively*
28 *offering and coordinating care and treatment services to him or*
29 *her.*

30 *(B) AIDS Drug Assistance Program staff and care services staff*
31 *in the State Department of Public Health may further disclose the*
32 *information directly to the HIV-positive person who is the subject*
33 *of the record or the health care provider who provides his or her*
34 *HIV care, for the purpose of proactively offering and coordinating*
35 *care and treatment services to him or her.*

36 *(3) Notwithstanding any other provision of law, for the purpose*
37 *of facilitating appropriate medical care and treatment of persons*
38 *coinfected with HIV, tuberculosis, and syphilis, gonorrhea, or*
39 *chlamydia, local public health agency sexually transmitted disease*
40 *control and tuberculosis control staff may further disclose the*

1 *information to state or local public health agency sexually*
 2 *transmitted disease control and tuberculosis control staff, the*
 3 *HIV-positive person who is the subject of the record, or the health*
 4 *care provider who provides his or her HIV, tuberculosis, and*
 5 *sexually transmitted disease care.*

6 (4) *For the purposes of paragraphs (2) and(3), “staff” does not*
 7 *include nongovernmental entities.*

8 (d) No confidential public health record, as defined in
 9 subdivision (c) of Section 121035, shall be disclosed, discoverable,
 10 or compelled to be produced in any civil, criminal, administrative,
 11 or other proceeding.

12 (e) (1) Any person who negligently discloses the content of
 13 any confidential public health record, as defined in subdivision (c)
 14 of Section 121035, to any third party, except pursuant to a written
 15 authorization, as described in subdivision (a), or as otherwise
 16 authorized by law, shall be subject to a civil penalty in an amount
 17 not to exceed ~~two thousand five hundred dollars (\$2,500)~~ *five*
 18 *thousand dollars (\$5,000)*, plus court costs, as determined by the
 19 court, which penalty and costs shall be paid to the person whose
 20 record was disclosed.

21 (2) Any person who willfully or maliciously discloses the
 22 content of any confidential public health record, as defined in
 23 subdivision (c) of Section 121035, to any third party, except
 24 pursuant to a written authorization, or as otherwise authorized by
 25 law, shall be subject to a civil penalty in an amount not less than
 26 five thousand dollars (\$5,000) and not more than ~~ten thousand~~
 27 ~~dollars (\$10,000)~~ *twenty-five thousand dollars (\$25,000)*, plus
 28 court costs, as determined by the court, which penalty and costs
 29 shall be paid to the person whose confidential public health record
 30 was disclosed.

31 (3) Any person who willfully, maliciously, or negligently
 32 discloses the content of any confidential public health record, as
 33 defined in subdivision (c) of Section 121035, to any third party,
 34 except pursuant to a written authorization, or as otherwise
 35 authorized by law, that results in economic, bodily, or
 36 psychological harm to the person whose confidential public health
 37 record was disclosed, is guilty of a misdemeanor, punishable by
 38 imprisonment in the county jail for a period not to exceed one year,
 39 or a fine of not to exceed twenty-five thousand dollars (\$25,000),
 40 or both, plus court costs, as determined by the court, which penalty

1 and costs shall be paid to the person whose confidential public
2 health record was disclosed.

3 (4) Any person who commits any act described in paragraph
4 (1), (2), or (3), shall be liable to the person whose confidential
5 public health record was disclosed for all actual damages for
6 economic, bodily, or psychological harm that is a proximate result
7 of the act.

8 (5) Each violation of this section is a separate and actionable
9 offense.

10 (6) Nothing in this section limits or expands the right of an
11 injured person whose confidential public health record was
12 disclosed to recover damages under any other applicable law.

13 (f) In the event that a confidential public health record, as
14 defined in subdivision (c) of Section 121035, is disclosed, the
15 information shall not be used to determine employability, or
16 insurability of any person.

17 *SEC. 4. Section 1.5 of this bill incorporates amendments to*
18 *Section 120130 of the Health and Safety Code proposed by both*
19 *this bill and AB 2786. It shall only become operative if (1) both*
20 *bills are enacted and become effective on or before January 1,*
21 *2011, (2) each bill amends Section 120130 of the Health and Safety*
22 *Code, and (3) this bill is enacted after AB 2786, in which case*
23 *Section 1 of this bill shall not become operative.*

24 ~~SEC. 3.~~

25 *SEC. 5.* No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution for certain
27 costs that may be incurred by a local agency or school district
28 because, in that regard, this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty for a crime
30 or infraction, within the meaning of Section 17556 of the
31 Government Code, or changes the definition of a crime within the
32 meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 However, if the Commission on State Mandates determines that
35 this act contains other costs mandated by the state, reimbursement
36 to local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

O