

AMENDED IN ASSEMBLY APRIL 5, 2010
AMENDED IN ASSEMBLY MARCH 22, 2010
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2635

Introduced by Assembly Member Portantino

February 19, 2010

~~An act to amend Section 60061 of the Education Code, relating to instructional material. An act to amend Section 121060 of the Health and Safety Code, relating to communicable disease.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2635, as amended, Portantino. ~~Education: instructional material. Communicable disease: involuntary testing.~~

Existing law establishes procedures by which an arrestee's blood may be tested, either voluntarily or by court order, for specified communicable diseases when a peace officer, firefighter, custodial officer, custody assistant, nonsworn uniformed employee of a law enforcement agency, or emergency medical personnel is exposed to an arrestee's blood or bodily fluids, as defined, while the peace officer, firefighter, custodial officer, custody assistant, nonsworn uniformed employee of a law enforcement agency, or emergency medical personnel is acting within the scope of his or her duties.

This bill would add nonsworn employees of a law enforcement agency whose job description includes the collection of fingerprints to the list of persons to which these provisions apply. Because this bill increases the duties of local officials, this bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law imposes specified requirements on a publisher or manufacturer of educational instructional material. If the publisher or manufacturer willfully fails to comply with the requirements, it is liable to the governing board, as specified.~~

~~This bill would specify that the publisher or manufacturer is also liable to the governing board if the failure to comply with the applicable requirements is due to gross negligence.~~

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

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

1 SECTION 1. Section 121060 of the Health and Safety Code is
2 amended to read:

3 121060. (a) Any peace officer, firefighter, custodial officer,
4 as that term is defined in subdivision (a) of Section 831 or
5 subdivision (a) of Section 831.5 of the Penal Code, a custody
6 assistant, as that term is defined in subdivision (a) of Section 831.7
7 of the Penal Code, a nonsworn uniformed employee of a law
8 enforcement agency whose job entails the care or control of inmates
9 in a detention facility, *a nonsworn employee of a law enforcement*
10 *agency whose job description entails the collection of fingerprints,*
11 or emergency medical personnel who, while acting within the
12 scope of his or her duties, is exposed to an arrestee’s blood or
13 bodily fluids, as defined in Section 121060.1, shall do the
14 following:

15 (1) Prior to filing a petition with the court, a licensed health care
16 provider shall notify the arrestee of the bloodborne pathogen
17 exposure and make a good faith effort to obtain the voluntary
18 informed consent of the arrestee or the arrestee’s authorized legal
19 representative to perform a test for human immunodeficiency virus
20 (HIV), hepatitis B, and hepatitis C. The voluntary informed consent

1 shall be in writing. Once consent is given in writing, the arrestee
2 shall provide three specimens of blood for testing as provided in
3 this chapter.

4 (2) If voluntary informed consent is not given in writing, the
5 affected individual may petition, ex parte, the court for an order
6 requiring testing as provided in this chapter. The petition shall
7 include a written certification by a health care professional that an
8 exposure, including the nature and extent of the exposure, has
9 occurred.

10 (b) The court shall promptly conduct a hearing upon a petition
11 filed pursuant to paragraph (2) of subdivision (a). If the court finds
12 that probable cause exists to believe that a possible bloodborne
13 pathogen exposure, as defined in Section 121060.1, took place
14 between the arrestee and the peace officer, firefighter, custodial
15 officer, custody assistant, nonsworn uniformed employee of a law
16 enforcement agency whose job entails the care or control of inmates
17 in a detention facility, *nonsworn employee of a law enforcement*
18 *agency whose job description entails the collection of fingerprints,*
19 or emergency medical personnel, as specified in this section, the
20 court shall order that the arrestee provide three specimens of blood
21 for testing as provided in this chapter.

22 (c) (1) Except as provided in paragraph (2), copies of the test
23 results shall be sent to the arrestee, each peace officer, firefighter,
24 custodial officer, custody assistant, nonsworn uniformed employee
25 of a law enforcement agency whose job entails the care or control
26 of inmates in a detention facility, *nonsworn employee of a law*
27 *enforcement agency whose job description entails the collection*
28 *of fingerprints,* and emergency medical personnel named in the
29 petition and his or her employing agency, officer, or entity, and if
30 the arrestee is incarcerated or detained, to the officer in charge and
31 the chief medical officer of the facility where the person is
32 incarcerated or detained.

33 (2) The person whose sample was tested, shall be advised that
34 he or she will be informed of the hepatitis B, hepatitis C, and HIV
35 test results only if he or she wishes to be so informed. If the person
36 consents to be informed of the hepatitis B, hepatitis C, and HIV
37 test results, then he or she shall sign a form documenting that
38 consent. The person's refusal to sign that form shall be construed
39 to be a refusal to be informed of the hepatitis B, hepatitis C, and
40 HIV test results.

1 (3) Except as otherwise provided under this section, all
 2 confidentiality requirements regarding medical records shall apply
 3 to the test results obtained.

4 *SEC. 2. If the Commission on State Mandates determines that*
 5 *this act contains costs mandated by the state, reimbursement to*
 6 *local agencies and school districts for those costs shall be made*
 7 *pursuant to Part 7 (commencing with Section 17500) of Division*
 8 *4 of Title 2 of the Government Code.*

9 ~~SECTION 1. Section 60061 of the Education Code is amended~~
 10 ~~to read:~~

11 ~~60061. (a) A publisher or manufacturer shall do all of the~~
 12 ~~following:~~

13 ~~(1) Furnish the instructional materials offered by the publisher~~
 14 ~~at a price in this state that, including all costs of transportation to~~
 15 ~~that place, does not exceed the lowest price at which the publisher~~
 16 ~~offers those instructional materials for adoption or sale to any state~~
 17 ~~or school district in the United States.~~

18 ~~(2) Automatically reduce the price of those instructional~~
 19 ~~materials to any governing board to the extent that reductions are~~
 20 ~~made elsewhere in the United States.~~

21 ~~(3) Provide any instructional materials free of charge in this~~
 22 ~~state to the same extent as that received by any state or school~~
 23 ~~district in the United States.~~

24 ~~(4) Guarantee that all copies of any instructional materials sold~~
 25 ~~in this state are at least equal in quality to the copies of those~~
 26 ~~instructional materials that are sold elsewhere in the United States,~~
 27 ~~and are kept revised, free from all errors, and up to date as may~~
 28 ~~be required by the state board.~~

29 ~~(5) Not in any way, directly or indirectly, become associated or~~
 30 ~~connected with any combination in restraint of trade in instructional~~
 31 ~~materials, or enter into any understanding, agreement, or~~
 32 ~~combination to control prices or restrict competition in the sale of~~
 33 ~~instructional materials for use in this state.~~

34 ~~(6) Maintain a representative, office, or depository in the State~~
 35 ~~of California or arrange with an independently owned and operated~~
 36 ~~depository in the State of California to receive and fill orders for~~
 37 ~~instructional materials.~~

38 ~~(7) Provide to the state, at no cost, computer files or other~~
 39 ~~electronic versions of each state-adopted literary title and the right~~
 40 ~~to transcribe, reproduce, modify, and distribute the material in~~

1 braille, large print if the publisher does not offer a large print
2 edition, recordings, American Sign Language videos for the deaf,
3 or other specialized accessible media exclusively for use by pupils
4 with visual disabilities or other disabilities that prevent use of
5 standard instructional materials. Computer files or other electronic
6 versions of materials adopted shall be provided within 30 days of
7 request by the state as needed for the purposes described in this
8 subdivision as follows:

9 (A) Computer files or other electronic versions of literary titles
10 shall maintain the structural integrity of the standard instructional
11 materials, be compatible with commonly used braille translation
12 and speech synthesis software, and include corrections and
13 revisions as may be necessary.

14 (B) Computer files or other electronic versions of nonliterary
15 titles, including science and mathematics, shall be provided when
16 technology is available to convert those materials to a format that
17 maintains the structural integrity of the standard instructional
18 materials and is compatible with braille translation and speech
19 synthesis software.

20 (b) Upon the willful failure or gross negligence of the publisher
21 or manufacturer to comply with each requirement of this section,
22 the publisher or manufacturer shall be liable to the governing board
23 in the amount of three times the total sum that the publisher or
24 manufacturer was paid in excess of the price required under
25 paragraphs (1), (2), and (5) of subdivision (a), and in the amount
26 of three times the total value of the instructional materials and
27 services that the governing board is entitled to receive free of
28 charge under subdivision (a).

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