

ASSEMBLY BILL

No. 1564

Introduced by Assembly Member Lara

January 30, 2012

An act to amend Sections 11165.7 and 11166.5 of the Penal Code, and to add Section 23701.1 to the Revenue and Taxation Code, relating to child abuse reporting, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1564, as introduced, Lara. Child abuse reporting: mandated reporters: tax-exempt organizations.

(1) Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine. Existing law excludes volunteers of public or private organizations whose duties require direct contact with and supervision of children from the list of mandated reporters. Existing law also strongly encourages employers to provide training in child abuse and neglect identification and reporting to their employees who are mandated reporters, and encourages public and private organizations to provide their volunteers whose duties require direct contact with and supervision of children with training in child abuse and neglect identification and reporting.

This bill would include volunteers of public or private organizations, including nonprofit organizations, whose duties require direct contact with and supervision of children in the list of individuals who are mandated reporters. The bill would also require employers to provide training in child abuse and neglect identification and reporting to their employees and volunteers who are mandated reporters.

By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program.

(2) The Corporation Tax Law exempts the income of organizations that are organized and operated for specified nonprofit purposes from state income taxes, as provided.

This bill would require, for taxable years beginning on and after the date this bill is operative, the Franchise Tax Board to revoke the exemption of an organization if a person who is a mandated reporter in the scope of his or her duties in the organization has been found guilty of a misdemeanor, as provided, with respect to failure to report an incident of known or reasonably suspected child sexual abuse, as defined, in the scope of his or her duties in the organization. This bill would require the board to reinstate the exemption if the organization provides notification that the guilty verdict of the person has been overturned.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Studies indicate that one in four girls and one in seven boys
- 4 will be the victim of some type of sexual abuse or assault before
- 5 18 years of age.

1 (b) Studies also indicate that child sexual abuse is 1.7 times
2 more common than childhood obesity and is 1.1 times more
3 common than the rates of teen pregnancy.

4 (c) In the wake of recent reports of sexual abuse cover-ups by
5 nonprofit organizations, immediate action is needed to deter
6 nonprofit organizations from concealing, fostering, or failing to
7 report abuse of children. Nonprofit organizations should be held
8 accountable for their actions and failures to act, and legislation is
9 needed to prevent additional lives from being damaged and to deter
10 nonprofit organizations from concealing reports of abuse.

11 SEC. 2. Section 11165.7 of the Penal Code is amended to read:

12 11165.7. (a) As used in this article, “mandated reporter” is
13 defined as any of the following:

14 (1) A teacher.

15 (2) An instructional aide.

16 (3) A teacher’s aide or teacher’s assistant employed by any
17 public or private school.

18 (4) A classified employee of any public school.

19 (5) An administrative officer or supervisor of child welfare and
20 attendance, or a certificated pupil personnel employee of any public
21 or private school.

22 (6) An administrator of a public or private day camp.

23 (7) An administrator or employee of a public or private youth
24 center, youth recreation program, or youth organization.

25 (8) An administrator or employee of a public or private
26 organization whose duties require direct contact and supervision
27 of children.

28 (9) Any employee of a county office of education or the State
29 Department of Education, whose duties bring the employee into
30 contact with children on a regular basis.

31 (10) A licensee, an administrator, or an employee of a licensed
32 community care or child day care facility.

33 (11) A Head Start program teacher.

34 (12) A licensing worker or licensing evaluator employed by a
35 licensing agency as defined in Section 11165.11.

36 (13) A public assistance worker.

37 (14) An employee of a child care institution, including, but not
38 limited to, foster parents, group home personnel, and personnel of
39 residential care facilities.

40 (15) A social worker, probation officer, or parole officer.

- 1 (16) An employee of a school district police or security
2 department.
- 3 (17) Any person who is an administrator or presenter of, or a
4 counselor in, a child abuse prevention program in any public or
5 private school.
- 6 (18) A district attorney investigator, inspector, or local child
7 support agency caseworker unless the investigator, inspector, or
8 caseworker is working with an attorney appointed pursuant to
9 Section 317 of the Welfare and Institutions Code to represent a
10 minor.
- 11 (19) A peace officer, as defined in Chapter 4.5 (commencing
12 with Section 830) of Title 3 of Part 2, who is not otherwise
13 described in this section.
- 14 (20) A firefighter, except for volunteer firefighters.
- 15 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
16 resident, intern, podiatrist, chiropractor, licensed nurse, dental
17 hygienist, optometrist, marriage and family therapist, clinical social
18 worker, professional clinical counselor, or any other person who
19 is currently licensed under Division 2 (commencing with Section
20 500) of the Business and Professions Code.
- 21 (22) Any emergency medical technician I or II, paramedic, or
22 other person certified pursuant to Division 2.5 (commencing with
23 Section 1797) of the Health and Safety Code.
- 24 (23) A psychological assistant registered pursuant to Section
25 2913 of the Business and Professions Code.
- 26 (24) A marriage and family therapist trainee, as defined in
27 subdivision (c) of Section 4980.03 of the Business and Professions
28 Code.
- 29 (25) An unlicensed marriage and family therapist intern
30 registered under Section 4980.44 of the Business and Professions
31 Code.
- 32 (26) A state or county public health employee who treats a minor
33 for venereal disease or any other condition.
- 34 (27) A coroner.
- 35 (28) A medical examiner, or any other person who performs
36 autopsies.
- 37 (29) A commercial film and photographic print processor, as
38 specified in subdivision (e) of Section 11166. As used in this
39 article, “commercial film and photographic print processor” means
40 any person who develops exposed photographic film into negatives,

1 slides, or prints, or who makes prints from negatives or slides, for
2 compensation. The term includes any employee of such a person;
3 it does not include a person who develops film or makes prints for
4 a public agency.

5 (30) A child visitation monitor. As used in this article, “child
6 visitation monitor” means any person who, for financial
7 compensation, acts as monitor of a visit between a child and any
8 other person when the monitoring of that visit has been ordered
9 by a court of law.

10 (31) An animal control officer or humane society officer. For
11 the purposes of this article, the following terms have the following
12 meanings:

13 (A) “Animal control officer” means any person employed by a
14 city, county, or city and county for the purpose of enforcing animal
15 control laws or regulations.

16 (B) “Humane society officer” means any person appointed or
17 employed by a public or private entity as a humane officer who is
18 qualified pursuant to Section 14502 or 14503 of the Corporations
19 Code.

20 (32) A clergy member, as specified in subdivision (d) of Section
21 11166. As used in this article, “clergy member” means a priest,
22 minister, rabbi, religious practitioner, or similar functionary of a
23 church, temple, or recognized denomination or organization.

24 (33) Any custodian of records of a clergy member, as specified
25 in this section and subdivision (d) of Section 11166.

26 (34) Any employee of any police department, county sheriff’s
27 department, county probation department, or county welfare
28 department.

29 (35) An employee or volunteer of a Court Appointed Special
30 Advocate program, as defined in ~~Rule 424~~ 5.655 of the California
31 Rules of Court.

32 (36) A custodial officer as defined in Section 831.5.

33 (37) Any person providing services to a minor child under
34 Section 12300 or 12300.1 of the Welfare and Institutions Code.

35 (38) An alcohol and drug counselor. As used in this article, an
36 “alcohol and drug counselor” is a person providing counseling,
37 therapy, or other clinical services for a state licensed or certified
38 drug, alcohol, or drug and alcohol treatment program. However,
39 alcohol or drug abuse, or both alcohol and drug abuse, is not in
40 and of itself a sufficient basis for reporting child abuse or neglect.

1 (39) A clinical counselor trainee, as defined in subdivision (g)
2 of Section 4999.12 of the Business and Professions Code.

3 (40) A clinical counselor intern registered under Section 4999.42
4 of the Business and Professions Code.

5 ~~(b) Except as provided in paragraph (35) of subdivision (a),~~
6 ~~volunteers of public or private organizations whose duties require~~
7 ~~direct contact with and supervision of children are not mandated~~
8 ~~reporters but are encouraged to obtain training in the identification~~
9 ~~and reporting of child abuse and neglect and are further encouraged~~
10 ~~to report known or suspected instances of child abuse or neglect~~
11 ~~to an agency specified in Section 11165.9.~~

12 (41) *Volunteers of public or private organizations, including*
13 *nonprofit organizations, whose duties require direct contact with*
14 *and supervision of children.*

15 (e)

16 ~~(b) Employers are strongly encouraged to shall provide their~~
17 ~~employees and volunteers who are mandated reporters with training~~
18 ~~in the duties imposed by this article. This training shall include~~
19 ~~training in child abuse and neglect identification and training in~~
20 ~~child abuse and neglect reporting. Whether or not employers~~
21 ~~provide their employees with training in child abuse and neglect~~
22 ~~identification and reporting, the The employers shall provide their~~
23 ~~employees and volunteers who are mandated reporters with the~~
24 ~~statement required pursuant to subdivision (a) of Section 11166.5.~~

25 ~~(d) School districts that do not train their employees specified~~
26 ~~in subdivision (a) in the duties of mandated reporters under the~~
27 ~~child abuse reporting laws shall report to the State Department of~~
28 ~~Education the reasons why this training is not provided.~~

29 (e)

30 (c) Unless otherwise specifically provided, the absence of
31 training shall not excuse a mandated reporter from the duties
32 imposed by this article.

33 ~~(f) Public and private organizations are encouraged to provide~~
34 ~~their volunteers whose duties require direct contact with and~~
35 ~~supervision of children with training in the identification and~~
36 ~~reporting of child abuse and neglect.~~

37 SEC. 3. Section 11166.5 of the Penal Code is amended to read:

38 11166.5. (a) (1) On and after January 1, 1985, any mandated
39 reporter as specified in Section 11165.7, with the exception of
40 child visitation monitors, prior to commencing his or her

1 employment, and as a prerequisite to that employment, shall sign
2 a statement on a form provided to him or her by his or her employer
3 to the effect that he or she has knowledge of the provisions of
4 Section 11166 and will comply with those provisions. The
5 statement shall inform the employee that he or she is a mandated
6 reporter and inform the employee of his or her reporting obligations
7 under Section 11166 and of his or her confidentiality rights under
8 subdivision (d) of Section 11167. The employer shall provide a
9 copy of Sections 11165.7, 11166, and 11167 to the employee.

10 (2) *On or after the date the act adding this paragraph is*
11 *operative, the employer shall also provide a copy of Section 152.3*
12 *to any mandated reporter that is a current employee and to any*
13 *new mandated reporter prior to commencing his or her*
14 *employment.*

15 ~~On~~

16 (3) *On and after January 1, 1993, any person who acts as a child*
17 *visitation monitor, as defined in paragraph (30) of subdivision (a)*
18 *of Section 11165.7, prior to engaging in monitoring the first visit*
19 *in a case, shall sign a statement on a form provided to him or her*
20 *by the court which ordered the presence of that third person during*
21 *the visit, to the effect that he or she has knowledge of the provisions*
22 *of Section 11166 and will comply with those provisions.*

23 ~~The~~

24 (4) *The signed statements shall be retained by the employer or*
25 *the court, as the case may be. The cost of printing, distribution,*
26 *and filing of these statements shall be borne by the employer or*
27 *the court.*

28 ~~This~~

29 (5) *This subdivision is not applicable to persons employed by*
30 *public or private youth centers, youth recreation programs, and*
31 *youth organizations as members of the support staff or maintenance*
32 *staff and who do not work with, observe, or have knowledge of*
33 *children as part of their official duties.*

34 (b) *On and after January 1, 1986, when a person is issued a state*
35 *license or certificate to engage in a profession or occupation, the*
36 *members of which are required to make a report pursuant to Section*
37 *11166, the state agency issuing the license or certificate shall send*
38 *a statement substantially similar to the one contained in subdivision*
39 *(a) to the person at the same time as it transmits the document*
40 *indicating licensure or certification to the person. In addition to*

1 the requirements contained in subdivision (a), the statement also
 2 shall indicate that failure to comply with the requirements of
 3 Section 11166 is a misdemeanor, punishable by up to six months
 4 in a county jail, by a fine of one thousand dollars (\$1,000), or by
 5 both that imprisonment and fine.

6 (c) As an alternative to the procedure required by subdivision
 7 (b), a state agency may cause the required statement to be printed
 8 on all application forms for a license or certificate printed on or
 9 after January 1, 1986.

10 (d) On and after January 1, 1993, any child visitation monitor,
 11 as defined in paragraph (30) of subdivision (a) of Section 11165.7,
 12 who desires to act in that capacity shall have received training in
 13 the duties imposed by this article, including training in child abuse
 14 identification and child abuse reporting. The person, prior to
 15 engaging in monitoring the first visit in a case, shall sign a
 16 statement on a form provided to him or her by the court which
 17 ordered the presence of that third person during the visit, to the
 18 effect that he or she has received this training. This statement may
 19 be included in the statement required by subdivision (a) or it may
 20 be a separate statement. This statement shall be filed, along with
 21 the statement required by subdivision (a), in the court file of the
 22 case for which the visitation monitoring is being provided.

23 (e) Any person providing services to a minor child, as described
 24 in paragraph (37) of subdivision (a) of Section 11165.7, shall not
 25 be required to make a report pursuant to Section 11166 unless that
 26 person has received training, or instructional materials in the
 27 appropriate language, on the duties imposed by this article,
 28 including identifying and reporting child abuse and neglect.

29 SEC. 4. Section 23701.1 is added to the Revenue and Taxation
 30 Code, to read:

31 23701.1. (a) Notwithstanding any other law, for taxable years
 32 beginning on or after the date the act adding this section is
 33 operative, no exemption from taxes imposed under this part shall
 34 apply to, and the Franchise Tax Board shall revoke the exemption
 35 from taxes imposed under this part of, an organization that meets
 36 the following conditions:

37 (1) Is organized and operated for nonprofit purposes within the
 38 provisions of a specified section of this article.

39 (2) An administrator, employee, volunteer, or other person of
 40 the organization is a mandated reporter, as defined under Section

1 11165.7 of the Penal Code, in the scope of his or her duties in the
2 organization, and that person has been found guilty of a
3 misdemeanor on or after the date the act adding this section is
4 operative, under subdivision (c) of Section 11166 of the Penal
5 Code, for a failure to report an incident of known or reasonably
6 suspected child sexual abuse in the scope of his or her duties in
7 the organization, as defined under the Child Abuse and Neglect
8 Reporting Act (Article 2.5 (commencing with Section 11164) of
9 Chapter 2 of Title 1 of Part 4 of the Penal Code).

10 (b) The board shall reinstate the exemption if the organization
11 provides notification that a guilty verdict of the person as described
12 in paragraph (2) of subdivision (a) has been overturned and the
13 organization otherwise meets all the other requirements of this
14 chapter.

15 SEC. 5. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

24 SEC. 6. This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or safety within
26 the meaning of Article IV of the Constitution and shall go into
27 immediate effect. The facts constituting the necessity are:

28 In order to protect victims of child abuse and to deter nonprofit
29 organizations from concealing reports of child abuse at the earliest
30 possible date, it is necessary that this act take effect immediately.