

AMENDED IN SENATE APRIL 16, 2012

**SENATE BILL**

**No. 1378**

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**Introduced by Senator Hancock**

February 24, 2012

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An act to amend Section 1798.200 of, ~~and to add Section 1798.203 to,~~ the Health and Safety Code, relating to emergency medical services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1378, as amended, Hancock. Emergency medical services: personnel.

Existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, establishes the Emergency Medical Services Authority (EMSA) and provides for the certification of emergency medical technicians through the issuance of certificates, including EMT-I and EMT-II certificates, by local entities, known as local EMS agencies, which are designated by counties. Existing law also permits public safety agencies, for public safety personnel, and the State Board of Fire Services, for fire safety personnel, to issue EMT-I certificates.

Existing law requires the EMSA to establish EMT-I and EMT-II certification and disciplinary guidelines. Existing law authorizes an EMT-I or EMT-II employer or medical director of a local EMS agency to investigate and discipline those EMT-I and EMT-II employees who commit specified acts. Existing law provides that the medical director of a local EMS agency or the EMSA may deny, suspend, or revoke certificates issued under these provisions, or may place a certificate holder on probation, upon the occurrence of any of specified events. Violation of the act is a misdemeanor.

~~This bill would revise and recast the disciplinary provisions regarding EMT-I and EMT-II certificate holders and the reasons for require the medical director of a local EMS agency to evaluate the good character and rehabilitation of an applicant for a certificate who has a prior criminal conviction before denying a certificate, as specified, and would authorize a local EMS agency to issue a probationary EMT-I or EMT-II certificate.~~

~~By imposing new duties upon local officials and changing the definition of a crime, this bill would create 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 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.~~

~~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.~~

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 1798.200 of the Health and Safety Code*
- 2 *is amended to read:*
- 3 1798.200. (a) (1) (A) Except as provided in paragraph (2),
- 4 an employer of an EMT-I or EMT-II may conduct investigations,
- 5 as necessary, and take disciplinary action against an EMT-I or
- 6 EMT-II who is employed by that employer for conduct in violation
- 7 of subdivision (c). The employer shall notify the medical director
- 8 of the local EMS agency that has jurisdiction in the county in which

1 the alleged violation occurred within three days when an allegation  
2 has been validated as a potential violation of subdivision (c).

3 (B) Each employer of an EMT-I or EMT-II employee shall  
4 notify the medical director of the local EMS agency that has  
5 jurisdiction in the county in which a violation related to subdivision  
6 (c) occurred within three days after the EMT-I or EMT-II is  
7 terminated or suspended for a disciplinary cause, the EMT-I or  
8 EMT-II resigns following notification of an impending  
9 investigation based upon evidence that would indicate the existence  
10 of a disciplinary cause, or the EMT-I or EMT-II is removed from  
11 EMT-related duties for a disciplinary cause after the completion  
12 of the employer's investigation.

13 (C) At the conclusion of an investigation, the employer of an  
14 EMT-I or EMT-II may develop and implement, in accordance with  
15 the guidelines for disciplinary orders, temporary suspensions, and  
16 conditions of probation adopted pursuant to Section 1797.184, a  
17 disciplinary plan for the EMT-I or EMT-II. Upon adoption of the  
18 disciplinary plan, the employer shall submit that plan to the local  
19 EMS agency within three working days. The employer's  
20 disciplinary plan may include a recommendation that the medical  
21 director of the local EMS agency consider taking action against  
22 the holder's certificate pursuant to paragraph (3).

23 (2) If an EMT-I or EMT-II is not employed by an ambulance  
24 service licensed by the Department of the California Highway  
25 Patrol or a public safety agency or if that ambulance service or  
26 public safety agency chooses not to conduct an investigation  
27 pursuant to paragraph (1) for conduct in violation of subdivision  
28 (c), the medical director of a local EMS agency shall conduct the  
29 investigations, and, upon a determination of disciplinary cause,  
30 take disciplinary action as necessary against the EMT-I or EMT-II.  
31 At the conclusion of these investigations, the medical director shall  
32 develop and implement, in accordance with the recommended  
33 guidelines for disciplinary orders, temporary orders, and conditions  
34 of probation adopted pursuant to Section 1797.184, a disciplinary  
35 plan for the EMT-I or EMT-II. The medical director's disciplinary  
36 plan may include action against the holder's certificate pursuant  
37 to paragraph (3).

38 (3) The medical director of the local EMS agency may, upon a  
39 determination of disciplinary cause and in accordance with  
40 regulations for disciplinary processes adopted pursuant to Section

1 1797.184, deny, suspend, or revoke any EMT-I or EMT-II  
2 certificate issued under this division, or may place any EMT-I or  
3 EMT-II certificate holder on probation, upon the finding by that  
4 medical director of the occurrence of any of the actions listed in  
5 subdivision (c) and the occurrence of one of the following:

6 (A) The EMT-I or EMT-II employer, after conducting an  
7 investigation, failed to impose discipline for the conduct under  
8 investigation, or the medical director makes a determination that  
9 the discipline imposed was not according to the guidelines for  
10 disciplinary orders and conditions of probation and the conduct of  
11 the EMT-I or EMT-II certificate holder constitutes grounds for  
12 disciplinary action against the certificate.

13 (B) Either the employer of an EMT-I or EMT-II further  
14 determines, after an investigation conducted under paragraph (1),  
15 or the medical director determines after an investigation conducted  
16 under paragraph (2), that the conduct requires disciplinary action  
17 against the certificate.

18 (4) The medical director of the local EMS agency, after  
19 consultation with the employer of an EMT-I or EMT-II, may  
20 temporarily suspend, prior to a hearing, any EMT-I or EMT-II  
21 certificate or both EMT-I and EMT-II certificates upon a  
22 determination that both of the following conditions have been met:

23 (A) The certificate holder has engaged in acts or omissions that  
24 constitute grounds for revocation of the EMT-I or EMT-II  
25 certificate.

26 (B) Permitting the certificate holder to continue to engage in  
27 the certified activity without restriction would pose an imminent  
28 threat to the public health or safety.

29 (5) If the medical director of the local EMS agency temporarily  
30 suspends a certificate, the local EMS agency shall notify the  
31 certificate holder that his or her EMT-I or EMT-II certificate is  
32 suspended and shall identify the reasons therefor. Within three  
33 working days of the initiation of the suspension by the local EMS  
34 agency, the agency and employer shall jointly investigate the  
35 allegation in order for the agency to make a determination of the  
36 continuation of the temporary suspension. All investigatory  
37 information not otherwise protected by law held by the agency  
38 and employer shall be shared between the parties via facsimile  
39 transmission or overnight mail relative to the decision to  
40 temporarily suspend. The local EMS agency shall decide, within

1 15 calendar days, whether to serve the certificate holder with an  
2 accusation pursuant to Chapter 5 (commencing with Section 11500)  
3 of Part 1 of Division 3 of Title 2 of the Government Code. If the  
4 certificate holder files a notice of defense, the hearing shall be held  
5 within 30 days of the local EMS agency's receipt of the notice of  
6 defense. The temporary suspension order shall be deemed vacated  
7 if the local EMS agency fails to make a final determination on the  
8 merits within 15 days after the administrative law judge renders  
9 the proposed decision.

10 (6) The medical director of the local EMS agency shall refer,  
11 for investigation and discipline, any complaint received on an  
12 EMT-I or EMT-II to the relevant employer within three days of  
13 receipt of the complaint, pursuant to subparagraph (A) of paragraph  
14 (1) of subdivision (a).

15 (b) The authority may deny, suspend, or revoke any EMT-P  
16 license issued under this division, or may place any EMT-P license  
17 issued under this division, or may place any EMT-P licenseholder  
18 on probation upon the finding by the director of the occurrence of  
19 any of the actions listed in subdivision (c). Proceedings against  
20 any EMT-P license or licenseholder shall be held in accordance  
21 with Chapter 5 (commencing with Section 11500) of Part 1 of  
22 Division 3 of Title 2 of the Government Code.

23 (c) Any of the following actions shall be considered evidence  
24 of a threat to the public health and safety and may result in the  
25 denial, suspension, or revocation of a certificate or license issued  
26 under this division, or in the placement on probation of a certificate  
27 holder or licenseholder under this division:

28 (1) Fraud in the procurement of any certificate or license under  
29 this division.

30 (2) Gross negligence.

31 (3) Repeated negligent acts.

32 (4) Incompetence.

33 (5) The commission of any fraudulent, dishonest, or corrupt act  
34 that is substantially related to the qualifications, functions, and  
35 duties of prehospital personnel.

36 (6) Conviction of any crime which is substantially related to  
37 the qualifications, functions, and duties of prehospital personnel.  
38 The record of conviction or a certified copy of the record shall be  
39 conclusive evidence of the conviction.

- 1 (7) Violating or attempting to violate directly or indirectly, or  
2 assisting in or abetting the violation of, or conspiring to violate,  
3 any provision of this division or the regulations adopted by the  
4 authority pertaining to prehospital personnel.
- 5 (8) Violating or attempting to violate any federal or state statute  
6 or regulation that regulates narcotics, dangerous drugs, or  
7 controlled substances.
- 8 (9) Addiction to, the excessive use of, or the misuse of, alcoholic  
9 beverages, narcotics, dangerous drugs, or controlled substances.
- 10 (10) Functioning outside the supervision of medical control in  
11 the field care system operating at the local level, except as  
12 authorized by any other license or certification.
- 13 (11) Demonstration of irrational behavior or occurrence of a  
14 physical disability to the extent that a reasonable and prudent  
15 person would have reasonable cause to believe that the ability to  
16 perform the duties normally expected may be impaired.
- 17 (12) Unprofessional conduct exhibited by any of the following:  
18 (A) The mistreatment or physical abuse of any patient resulting  
19 from force in excess of what a reasonable and prudent person  
20 trained and acting in a similar capacity while engaged in the  
21 performance of his or her duties would use if confronted with a  
22 similar circumstance. Nothing in this section shall be deemed to  
23 prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace  
24 officer, or a peace officer who is acting in the dual capacity of  
25 peace officer and EMT-I, EMT-II, or EMT-P, from using that force  
26 that is reasonably necessary to effect a lawful arrest or detention.
- 27 (B) The failure to maintain confidentiality of patient medical  
28 information, except as disclosure is otherwise permitted or required  
29 by law in Part 2.6 (commencing with Section 56) of Division 1 of  
30 the Civil Code.
- 31 (C) The commission of any sexually related offense specified  
32 under Section 290 of the Penal Code.
- 33 (d) The information shared among EMT-I, EMT-II, and EMT-P  
34 employers, medical directors of local EMS agencies, the authority,  
35 and EMT-I and EMT-II certifying entities shall be deemed to be  
36 an investigative communication that is exempt from public  
37 disclosure as a public record pursuant to subdivision (f) of Section  
38 6254 of the Government Code. A formal disciplinary action against  
39 an EMT-I, EMT-II, or EMT-P shall be considered a public record

1 available to the public, unless otherwise protected from disclosure  
2 pursuant to state or federal law.

3 (e) For purposes of this section, “disciplinary cause” means an  
4 act that is substantially related to the qualifications, functions, and  
5 duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat  
6 to the public health and safety described in subdivision (c).

7 (f) *In determining whether to deny an application for an EMT-I  
8 or EMT-II certificate by an individual who has a prior criminal  
9 conviction, the medical director of the local EMS agency shall  
10 evaluate the good character and rehabilitation of the applicant.  
11 In making the evaluation, the medical director may take into  
12 consideration the following factors:*

13 (1) *The nature and seriousness of the conduct or crime under  
14 consideration and its relationship to the person’s employment  
15 duties and responsibilities.*

16 (2) *Activities since conviction, including employment or  
17 participation in therapy or education, that would indicate changed  
18 behavior.*

19 (3) *The time that has elapsed since the commission of the  
20 conduct or offense that resulted in the criminal conviction and the  
21 number of offenses.*

22 (4) *The extent to which the person has complied with any terms  
23 of parole, probation, restitution, or any other sanction lawfully  
24 imposed against the person.*

25 (5) *Any rehabilitation evidence, including character references,  
26 submitted by the person.*

27 (6) *Employment history and current employer recommendations.*

28 (7) *Circumstances surrounding the commission of the offense  
29 that would demonstrate the unlikelihood of repetition.*

30 (8) *The granting by the Governor of a full and unconditional  
31 pardon, where eligible.*

32 (9) *Whether the applicant has secured a certificate of  
33 rehabilitation from a superior court.*

34 (10) *Whether the information or accusation against the applicant  
35 has been dismissed pursuant to Section 1203.4 or 1203.4a of the  
36 Penal Code.*

37 (g) *In determining whether to deny an application for an EMT-I  
38 or EMT-II certificate pursuant to subdivision (f), the medical  
39 director of a local EMS agency shall only consider prior  
40 convictions for which the applicant was prosecuted as an adult.*

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

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**All matter omitted in this version of the bill  
appears in the bill as introduced in the  
Senate, February 24, 2012. (JR11)**

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