

Assembly Bill No. 1667

CHAPTER 329

An act to amend Section 49406 of the Education Code, and to amend Sections 121525, 121535, 121545, and 121555 of the Health and Safety Code, relating to tuberculosis testing.

[Approved by Governor September 15, 2014. Filed with
Secretary of State September 15, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1667, Williams. Tuberculosis testing in schools.

Existing law prohibits a person being initially employed by a school district in a certificated or classified position, or who is employed or volunteering at a private or parochial school or nursery school, unless the person has submitted to a tuberculosis examination within the past 60 days, and requires the person to undergo an examination by a physician and surgeon or a physician assistant, as specified, to determine that he or she is free of active tuberculosis at least once every 4 years thereafter. Existing law requires the governing board of a school district to reimburse the employee for the cost of the examination.

This bill would instead require a person to submit to a tuberculosis risk assessment, and, if risk factors are identified, would then require the person to submit to a tuberculosis examination to determine that the person is free of infectious tuberculosis. The bill would allow a person who is subject to these requirements to submit to an examination instead of submitting to a tuberculosis risk assessment, as specified. The bill would also make those provisions applicable to persons under contract in any school or volunteering in a public school, except as specified. With respect to school district personnel, the bill would also authorize nurse practitioners to administer the examination.

The bill would require the State Department of Public Health, in consultation with the California Tuberculosis Controllers Association, to develop a risk assessment questionnaire, to be administered by a health care provider, to conduct the tuberculosis risk assessments. This risk assessment questionnaire would be exempt from the rulemaking provisions of the Administrative Procedure Act. To the extent that this bill imposes a new duty on a school district, the bill would impose a state-mandated local program. The bill would make other conforming and nonsubstantive changes.

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.

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

SECTION 1. Section 49406 of the Education Code is amended to read:

49406. (a) (1) (A) Except as provided in subdivision (j), a person shall not be initially employed by a school district, or employed under contract, in a certificated or classified position unless the person has submitted to a tuberculosis risk assessment within the past 60 days, and, if tuberculosis risk factors are identified, has been examined to determine that he or she is free of infectious tuberculosis by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a nurse practitioner practicing in compliance with Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code. If no risk factors are identified, an examination is not required. A person who is subject to the requirements of this subdivision may submit to an examination that complies with subparagraph (B) instead of submitting to a tuberculosis risk assessment.

(B) The examination required by this subdivision shall consist of either an approved intradermal tuberculin test or any other test for tuberculosis infection that is recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA). If the test is positive, the test shall be followed by an X-ray of the lungs in accordance with subdivision (f) of Section 120115 of the Health and Safety Code.

(2) The X-ray may be taken by a competent and qualified X-ray technician if the X-ray is subsequently interpreted by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(3) The district superintendent of schools or his or her designee may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive test for tuberculosis infection be followed by an X-ray of the lungs.

(b) Thereafter, an employee who has no identified risk factors or who tests negative for the tuberculosis infection shall be required to undergo the tuberculosis risk assessment and, if risk factors are identified, the examination, at least once each four years or more often if directed by the governing board of the school district upon recommendation of the local health officer. Once an employee has a documented positive test for tuberculosis infection conducted pursuant to this subdivision that has been followed by an X-ray, the tuberculosis risk assessment is no longer required.

A referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the tuberculosis risk assessment and, if indicated, the examination, the employee shall file with the district superintendent of schools a certificate from the examining physician and surgeon, physician assistant, or nurse practitioner showing the employee was examined and found free from infectious tuberculosis. The county board of education may require, by rule, that the certificates be filed in the office of the county superintendent of schools or maintained in the office of the county superintendent of schools if a majority of the governing boards of the school districts within the county petition the county board of education. A school district, or school districts with a common governing board, having an average daily attendance of 60,000 or more may elect to maintain the files for its employees in that school district.

(d) As used in this section, “certificate” means a certificate signed by the examining physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a nurse practitioner practicing in compliance with Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, or a notice from a public health agency that indicates freedom from infectious tuberculosis. The latter, regardless of form, shall constitute evidence of compliance with this section.

(e) Nothing in this section shall prevent the governing board of a school district, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent physical examination than required by this section. The rule shall provide for reimbursement on the same basis as required in this section.

(f) The tuberculosis risk assessment and, if indicated, the examination is a condition of initial employment and the expense shall be borne by the applicant unless otherwise provided by rules of the governing board of the school district. However, the governing board of a school district may, if an applicant is accepted for employment, reimburse that person in a like manner prescribed in this section for employees.

(g) The governing board of a school district shall reimburse the employee for the cost, if any, of the tuberculosis risk assessment and the examination. The governing board of a school district may provide for the tuberculosis risk assessment and examination required by this section or may establish a reasonable fee for the examination that is reimbursable to employees of the school district complying with this section.

(h) At the discretion of the governing board of a school district, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a school year whose functions do not require frequent or prolonged contact with pupils.

(i) If the governing board of a school district determines by resolution, after hearing, that the health of pupils in the school district would not be jeopardized, this section shall not apply to an employee of the school district who files an affidavit stating that he or she adheres to the faith or teachings of a well-recognized religious sect, denomination, or organization and, in accordance with its creed, tenets, or principles, depends for healing upon prayer in the practice of religion, and that to the best of his or her knowledge and belief, he or she is free from infectious tuberculosis. If at any time there is probable cause to believe that the affiant is afflicted with infectious tuberculosis, he or she may be excluded from service until the governing board of the school district is satisfied that he or she is not afflicted.

(j) A person who transfers employment from one school or school district to another school or school district shall be deemed to meet the requirements of subdivision (a) if that person can produce a certificate that shows he or she was found to be free of infectious tuberculosis within 60 days of initial hire, or the school previously employing the person verifies that the person has a certificate on file showing that the person is free from infectious tuberculosis.

(k) A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school to a school or school district subject to this section shall be deemed to meet the requirements of subdivision (a) if that person can produce a certificate as provided for in Section 121525 of the Health and Safety Code that shows that he or she was found to be free of infectious tuberculosis within 60 days of initial hire, or if the school previously employing the person verifies that the person has a certificate on file showing that the person is free from infectious tuberculosis.

(l) A governing board or county superintendent of schools providing for the transportation of pupils under contract authorized by Section 39800, 39801, or any other provision of law shall require as a condition of the contract the tuberculosis risk assessment and, if indicated, the examination for infectious tuberculosis within 60 days of initial hire, as provided by subdivision (a), of all drivers transporting pupils. At the discretion of the governing board or county superintendent of schools, this subdivision shall not apply to a private contracted driver who transports pupils infrequently without prolonged contact with the pupils.

(m) A volunteer in a school shall also be required to have on file with the school a certificate showing that, upon initial volunteer assignment, the person submitted to a tuberculosis risk assessment and, if tuberculosis risk factors were identified, was examined and found to be free of infectious tuberculosis. If no risk factors are identified, an examination is not required. At the discretion of the governing board of a school district, this section shall not apply to a volunteer whose functions do not require frequent or prolonged contact with pupils.

(n) The State Department of Public Health, in consultation with the California Tuberculosis Controllers Association, shall develop a risk assessment questionnaire, to be used to conduct tuberculosis risk assessments

pursuant to this section. The risk assessment questionnaire shall be administered by a health care provider, which shall be specified on the questionnaire. This risk assessment questionnaire shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 2. Section 121525 of the Health and Safety Code is amended to read:

121525. (a) Except as provided in Section 121555, a person shall not be initially employed, or employed under contract, by a private or parochial elementary or secondary school, or any nursery school, unless that person produces or has on file with the school a certificate showing that within the last 60 days the person has submitted to a tuberculosis risk assessment and, if tuberculosis risk factors are identified, has been examined and has been found to be free of infectious tuberculosis. If no risk factors are identified, an examination is not required. A person who is subject to the requirements of this subdivision may submit to an examination that complies with the requirements of Section 121530 instead of submitting to a tuberculosis risk assessment.

(b) Thereafter, an employee who has no identified risk factors or who tests negative for the tuberculosis infection by either the tuberculin skin test or any other test for tuberculosis recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA), shall be required to undergo the foregoing tuberculosis risk assessment and, if risk factors are identified, the examination, at least once each four years, or more often if directed by the governing authority of the school upon recommendation of the local health officer. Once an employee has a documented positive test for the tuberculosis infection conducted pursuant to this subdivision, the tuberculosis risk assessment is no longer required. A referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) At the discretion of the governing authority of a private school, this section shall not apply to employees who are employed for any period of time less than a school year whose functions do not require frequent or prolonged contact with pupils.

(d) The governing authority of a private school providing for the transportation of pupils under authorized contract shall require as a condition of the contract that every person transporting pupils produce a certificate showing that within the last 60 days the person has submitted to a tuberculosis risk assessment, and, if tuberculosis risk factors are identified, has been examined and has been found to be free of infectious tuberculosis. At the discretion of the governing authority of the school, this section shall not apply to a private contracted driver who transports pupils infrequently and without prolonged contact with the pupils.

(e) The examination attested to in the certificate required pursuant to subdivision (d) shall be made available without charge by the local health officer.

(f) “Certificate,” as used in this chapter, means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency that indicates freedom from infectious tuberculosis.

(g) Nothing in this section shall prevent the governing authority of a private, parochial, or nursery school, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by this section.

(h) The State Department of Public Health, in consultation with the California Tuberculosis Controllers Association, shall develop a risk assessment questionnaire, to be used to conduct tuberculosis risk assessments pursuant to this section. The risk assessment questionnaire shall be administered by a health care provider, which shall be specified on the questionnaire. This risk assessment questionnaire shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 3. Section 121535 of the Health and Safety Code is amended to read:

121535. The X-ray may be taken by a competent and qualified X-ray technician if the X-ray is subsequently interpreted by a licensed physician and surgeon.

SEC. 4. Section 121545 of the Health and Safety Code is amended to read:

121545. (a) A volunteer in a school subject to this chapter shall also be required to have on file with the school a certificate showing that, upon initial volunteer assignment, the person submitted to a tuberculosis risk assessment, and, if tuberculosis risk factors were identified, the person was examined and found to be free of infectious tuberculosis. If no risk factors are identified, an examination is not required. A person who is subject to the requirements of this subdivision may take an examination that complies with the requirements of Section 121530 instead of submitting to a tuberculosis risk assessment.

(b) At the discretion of the governing authority of a school subject to this chapter this section shall not apply to a volunteer whose functions do not require frequent or prolonged contact with pupils.

SEC. 5. Section 121555 of the Health and Safety Code is amended to read:

121555. (a) A person who transfers his or her employment from one of the schools specified in subdivision (a) of Section 121525 to another shall be deemed to meet the requirements of subdivision (a) of Section 121525 if the person can produce a certificate that shows that he or she was found to be free of infectious tuberculosis within 60 days of initial hire, or the

school previously employing the person verifies that the school has a certificate on file showing that the person is free from infectious tuberculosis.

(b) A person who transfers his or her employment from a public elementary school or secondary school to any of the schools specified in subdivision (a) of Section 121525 shall be deemed to meet the requirements of subdivision (a) of Section 121525 if that person can produce a certificate as provided for in subdivision (c) of Section 49406 of the Education Code that shows that he or she was found to be free of infectious tuberculosis within 60 days of initial hire, or if the school district previously employing the person verifies that the school district has a certificate on file showing that the person is free from infectious tuberculosis.

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