

Assembly Bill No. 1898

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 27, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 121025 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1898, Brown. Public health records: reporting: HIV/AIDS.

Existing law, with specified exceptions, prohibits the disclosure of public health records containing personally identifiable information relating to human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS) that were developed or acquired by a state or local public health agency. Existing law authorizes disclosure of these public health records if otherwise provided by law for public health purposes, pursuant to a written authorization by the person who is the subject of the record, or when the confidential information is necessary to carry out the duties of the public health agency or researcher in the investigation, control, or surveillance of disease. Existing law requires these authorized disclosures to include only the information necessary for the purpose of that disclosure and to be made upon the agreement that the information will be kept confidential and will not be further disclosed without written authorization.

Existing law provides exceptions to the above-described requirements on the disclosure of information regarding public health records relating to HIV or AIDS, and authorizes specified disclosures of that information for the purpose of enhancing the completeness of HIV/AIDS, tuberculosis, and sexually transmitted disease coinfection reporting to the federal Centers for Disease Control and Prevention (CDC), including authorizing local public agency tuberculosis control staff to disclose the information to certain state public health agency staff who may further disclose the information to the CDC, as specified.

This bill would require any disclosure authorized under these provisions to include only the information necessary for the purpose of that disclosure and to be made upon the agreement that the information will be kept confidential. This bill would prohibit specified disclosures from being made without written authorization. The bill would include hepatitis B, hepatitis C, and

meningococcal infection for HIV/AIDS coinfection reporting to the CDC. The bill would additionally authorize, for purposes of the investigation, control, or surveillance of HIV and its coinfection with hepatitis B, hepatitis C, and meningococcal infection, local public health agency communicable disease staff to further disclose the information to state public health agency staff, who may further disclose the information to the CDC, as specified.

Existing law authorizes local public health agency sexually transmitted disease control and tuberculosis control staff to disclose the HIV/AIDS-related information to state or local public health agency sexually transmitted disease control and tuberculosis control staff, the HIV-positive person, or his or her health care provider, for the purpose of facilitating appropriate medical care and treatment of persons coinfecting with HIV, tuberculosis, syphilis, gonorrhea, or chlamydia.

This bill would additionally authorize any local public health agency sexually transmitted disease control, communicable disease control, and tuberculosis staff to further disclose that information to state or local public health agency sexually transmitted disease control, communicable disease control, and tuberculosis staff for the purpose of facilitating appropriate medical care and treatment of persons coinfecting with HIV, hepatitis B, hepatitis C, or meningococcal infection, as specified.

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

SECTION 1. Section 121025 of the Health and Safety Code is amended to read:

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

(b) In accordance with subdivision (g) of Section 121022, a state or local public health agency, or an agent of that agency, may disclose personally identifying information in public health records,

as described in subdivision (a), to other local, state, or federal public health agencies or to corroborating medical researchers, when the confidential information is necessary to carry out the duties of the agency or researcher in the investigation, control, or surveillance of disease, as determined by the state or local public health agency.

(c) Any disclosures authorized by subdivision (a), (b), or this subdivision shall include only the information necessary for the purpose of that disclosure and shall be made only upon the agreement that the information will be kept confidential as described in subdivision (a). Except as provided in paragraphs (1) to (3), inclusive, or as otherwise provided by law, any disclosure authorized by subdivision (a) or (b) shall not be made without written authorization as described in subdivision (a). Any unauthorized further disclosure shall be subject to the penalties described in subdivision (e).

(1) Notwithstanding any other law, the following disclosures shall be authorized for the purpose of enhancing the completeness of reporting to the federal Centers for Disease Control and Prevention (CDC) of HIV/AIDS and coinfection with tuberculosis, syphilis, gonorrhea, chlamydia, hepatitis B, hepatitis C, and meningococcal infection:

(A) The local public health agency HIV surveillance staff may further disclose the information to the health care provider who provides HIV care to the HIV-positive person who is the subject of the record for the purpose of assisting in compliance with subdivision (a) of Section 121022.

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

(C) Local public health agency sexually transmitted disease control staff may further disclose the information to state public health agency sexually transmitted disease control staff, who may further disclose the information, without disclosing patient identifying information, to the CDC, to the extent it is requested by the CDC and permitted by subdivision (b), for the purposes of

the investigation, control, or surveillance of HIV and syphilis, gonorrhea, or chlamydia coinfection.

(D) For purposes of the investigation, control, or surveillance of HIV and its coinfection with hepatitis B, hepatitis C, and meningococcal infection, local public health agency communicable disease staff may further disclose the information to state public health agency staff, who may further disclose the information, without disclosing patient identifying information, to the CDC to the extent the information is requested by the CDC and permitted by subdivision (b).

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

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

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

(C) Local public health agency staff may further disclose acquired or developed information to the HIV-positive person who is the subject of the record or the health care provider who provides his or her HIV care for the purpose of proactively offering and coordinating care and treatment services to him or her.

(3) Notwithstanding any other law, for the purpose of facilitating appropriate medical care and treatment of persons coinfecting with HIV and tuberculosis, syphilis, gonorrhea, chlamydia, hepatitis B, hepatitis C, or meningococcal infection, local public health agency sexually transmitted disease control, communicable disease control, and tuberculosis control staff may further disclose the information to state or local public health agency sexually transmitted disease control, communicable disease control, and tuberculosis control staff, the HIV-positive person who is the subject of the record, or

the health care provider who provides his or her HIV, tuberculosis, hepatitis B, hepatitis C, meningococcal infection, and sexually transmitted disease care.

(4) For the purposes of paragraphs (2) and (3), “staff” shall not include nongovernmental entities, but shall include state and local contracted employees who work within state and local public health departments.

(d) A confidential public health record, as defined in subdivision (c) of Section 121035, shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(e) (1) A person who negligently discloses the content of a confidential public health record, as defined in subdivision (c) of Section 121035, to a third party, except pursuant to a written authorization, as described in subdivision (a), or as otherwise authorized by law, shall be subject to a civil penalty in an amount not to exceed five thousand dollars (\$5,000), plus court costs, as determined by the court. The penalty and costs shall be paid to the person whose record was disclosed.

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

(3) A person who willfully, maliciously, or negligently discloses the content of a confidential public health record, as defined in subdivision (c) of Section 121035, to a third party, except pursuant to a written authorization, or as otherwise authorized by law, that results in economic, bodily, or psychological harm to the person whose confidential public health record was disclosed, is guilty of a misdemeanor, punishable by imprisonment in a county jail for a period not to exceed one year, or a fine of not to exceed twenty-five thousand dollars (\$25,000), or both, plus court costs, as determined by the court. The penalty and costs shall be paid to the person whose confidential public health record was disclosed.

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

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

(6) This section does not limit or expand the right of an injured person whose confidential public health record was disclosed to recover damages under any other applicable law.

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

Approved _____, 2014

Governor