

AMENDED IN SENATE MAY 12, 1998

AMENDED IN SENATE JULY 22, 1997

AMENDED IN ASSEMBLY JUNE 2, 1997

AMENDED IN ASSEMBLY MAY 22, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 123

Introduced by Assembly Members ~~Wildman and Cunneen~~
(~~Coauthors: Assembly Members Alquist, Baca, Caldera,~~
~~Cardoza, Knox, Kuehl, Lempert, Mazzoni, Napolitano,~~
~~Perata, Sweeney, Washington, and Wayne~~)
(~~Coauthors: Senators Alpert and Solis~~) *Member Wildman*

January 14, 1997

~~An act to amend Section 270 of the Penal Code, relating to support.~~ *An act to amend Section 3717 of, and to add Sections 3758, 3758.5, 3758.6, and 3759 to, the Business and Professions Code, relating to respiratory care practitioners.*

LEGISLATIVE COUNSEL'S DIGEST

AB 123, as amended, Wildman. ~~Child support~~ *Respiratory care practitioners.*

(1) Existing law, known as the Respiratory Care Practice Act, provides that, subject to certain disclosure limitations, members of the examining committee of the Respiratory Care Board, or respiratory practitioners or investigators working on their behalf, may inspect or require reports from hospitals and other facilities providing respiratory care, and from the

respiratory care staff therein, concerning the care, treatment, services, and facilities provided therein, and may inspect patient records with respect to respiratory care.

This bill would provide that members of the board, or practitioners, investigators, or enforcement staff appointed by the board, may make those inspections and may additionally inspect or require reports concerning the employment of staff providing respiratory care, treatment, or services. The bill would authorize these persons to inspect employment records relevant to an official investigation upon submission of a written request specifying the portion of the records to be inspected. This bill would also remove certain restrictions against disclosure, as specified.

(2) Existing law authorizes the Respiratory Care Board to take disciplinary action against licensed practitioners.

This bill would require employers of respiratory care practitioners to report the suspension or termination of practitioners for cause, as defined. This bill would punish the failure of an employer to submit this information as a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

This bill would require licensees with knowledge or reasonable belief that another person has violated any law or regulations administered by the board to report this information to the board in writing and to cooperate with the board by providing further information or assistance as may be required. This bill would also provide for civil immunity under a specified provision of law in connection with the making of any report required under these provisions.

This bill would require employers to report to the board the name and other information of the supervisor of a licensee suspended or terminated for cause, and would require the board, if the supervisor is also a licensee under these provisions, to investigate whether due care was exercised by the supervisor. It would require the employer to report this information about the supervisor to the appropriate licensing board if the supervisor is, instead, a health professional licensed by another licensing board. By adding these new requirements in the Respiratory Care Practice Act for employers of respiratory care practitioners, this bill would



expand the scope of an existing crime applicable to the violation of any provision of the Respiratory Care Practice Act, thereby imposing a state-mandated local program.

(3) 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.

~~(1) Under existing law, if a parent willfully omits to furnish necessary clothing, food, shelter, medical attendance, or other remedial care for his or her minor child, he or she shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment.~~

~~Existing law further provides that, if a person has notice that he or she has been adjudicated the parent of a minor child and he or she then commits the above offense, he or she shall be punished by imprisonment in a county jail not exceeding one year or in the state prison for one year and one day, by a fine not exceeding \$2,000, or by both that fine and imprisonment.~~

~~This bill would provide, instead of the second offense described above, that if a parent is in violation of the first offense described above for more than 6 months, or previously has been convicted of that offense or a violation of a court order concerning child support, he or she shall be punished by imprisonment in a county jail not exceeding one year or in the state prison for 16 months, or 2 or 3 years, by a fine not exceeding \$5,000, or by both that fine and imprisonment. By increasing the penalty for an existing crime, the bill would impose a state-mandated local program.~~

~~(2) Existing law, known as “the three strikes law” and codified in 2 initiative statutes, prescribes alternative prison sentencing for any person convicted of a felony who has one or more prior serious or violent felony convictions. The initiative statutes provide that any amendment of these provisions requires a $\frac{2}{3}$ vote of the membership of each house of the Legislature.~~

~~This bill would provide that a felony conviction under the provisions in (1) above shall not constitute a current felony~~



~~conviction for purposes of sentencing under the “three strikes” provisions of those initiative statutes. Because the bill would constitute an amendment of those initiative statutes, the bill would require a 2/3 vote.~~

~~(3) Existing law provides that in determining the ability of a parent to support his or her child, the court shall consider all income, including social insurance benefits and gifts.~~

~~This bill instead would provide for these purposes that the court shall consider all assets and income available to the parent, including social insurance benefits and gifts. The bill additionally would provide that inability to pay may constitute an affirmative defense to the element of willfulness for purposes of the provisions in (1).~~

~~(4) Existing law specifies that the provisions in (1) apply whether the parents of the child are or were ever married or divorced, and regardless of any divorce decree relating to alimony or child support.~~

~~This bill would delete the reference to a divorce decree relating to alimony. The bill also would define the term “parent” for purposes of the above provisions.~~

~~(5) 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.~~

~~Vote: 2/3 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 270 of the Penal Code is~~
- 2 ~~SECTION 1. Section 3717 of the Business and~~
- 3 ~~Professions Code is amended to read:~~
- 4 ~~3717. Each member of the examining committee~~
- 5 ~~board, or any licensed respiratory care practitioner,~~
- 6 ~~enforcement staff, or investigative unit appointed by the~~
- 7 ~~examining committee board, may inspect, or require~~
- 8 ~~reports from, a general or specialized hospital or any~~
- 9 ~~other facility or corporation providing respiratory care,~~



1 treatment, or services and the respiratory care staff
2 thereof, with respect to the respiratory care, treatment,
3 services, or facilities provided therein, *or the*
4 *employment of staff providing the respiratory care,*
5 *treatment, or services,* and may inspect respiratory care
6 patient records with respect to that care, treatment,
7 services, or facilities. ~~The authority to make inspections~~
8 ~~and to require reports as provided by this section shall be~~
9 ~~subject to the restrictions against disclosure described in~~
10 ~~Section 2225—Those persons may also inspect employment~~
11 ~~records relevant to an official investigation provided the~~
12 ~~written request to inspect the records specifies the~~
13 ~~portion of the records to be inspected.~~

14 SEC. 2. Section 3758 is added to the Business and
15 Professions Code, to read:

16 3758. (a) Any employer of a respiratory care
17 practitioner shall report to the Respiratory Care Board
18 the suspension or termination for cause of any
19 practitioner in their employ. The reporting required
20 herein shall not act as a waiver of confidentiality of
21 medical records. The information reported or disclosed
22 shall be kept confidential except as provided in
23 subdivision (c) of Section 800, and shall not be subject to
24 discovery in civil cases.

25 (b) For purposes of the section, “suspension of
26 termination for cause” is defined to mean suspension or
27 termination from employment for any of the following
28 reasons:

29 (1) Use of controlled substances or alcohol to such an
30 extent that it impairs the ability to safely practice
31 respiratory care.

32 (2) Unlawful sale of controlled substances or other
33 prescription items.

34 (3) Patient neglect, physical harm to a patient, or
35 sexual contact with a patient.

36 (4) Falsification of medical records.

37 (5) Gross incompetence or negligence.

38 (6) Theft from patients, other employees, or the
39 employer.



1 (c) Failure of an employer to make a report required
2 by this section is a misdemeanor.

3 SEC. 3. Section 3758.5 is added to the Business and
4 Professions Code, to read:

5 3758.5. If a licensee has knowledge or reasonably
6 believes that another person may be in violation of, or has
7 violated, any of the statutes or regulations administered
8 by the board, the licensee shall report this information to
9 the board in writing and shall cooperate with the board
10 in furnishing information or assistance as may be
11 required.

12 SEC. 4. Section 3758.6 is added to the Business and
13 Professions Code, to read:

14 3758.6. In addition to the reporting required under
15 Section 3758, an employer shall also report to the board
16 the name, professional licensure type and number, and
17 title of the person supervising the licensee who has been
18 suspended or terminated for cause, as defined in
19 subdivision (b) of Section 3758. If the supervisor is a
20 licensee under this chapter, the board shall investigate
21 whether due care was exercised by that supervisor in
22 accordance with this chapter. If the supervisor is a health
23 professional, licensed by another licensing board under
24 this division, the employer shall report the name of that
25 supervisor and any and all information pertaining to the
26 suspension or termination for cause of the person licensed
27 under this chapter to the appropriate licensing board.

28 SEC. 5. Section 3759 is added to the Business and
29 Professions Code, to read:

30 3759. Pursuant to Section 43.8 of the Civil Code, no
31 person shall incur any civil penalty as a result of making
32 any report required by this chapter.

33 SEC. 6. No reimbursement is required by this act
34 pursuant to Section 6 of Article XIII B of the California
35 Constitution because the only costs that may be incurred
36 by a local agency or school district will be incurred
37 because this act creates a new crime or infraction,
38 eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section
40 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

7 amended to read:

8 270. (a) If a parent of a minor child willfully omits,
9 without lawful excuse, to furnish necessary clothing, food,
10 shelter, or medical attendance, or other remedial care for
11 his or her child, he or she is guilty of a misdemeanor
12 punishable by a fine not exceeding two thousand dollars
13 (\$2,000), or by imprisonment in a county jail not
14 exceeding one year, or by both that fine and
15 imprisonment.

16 (b) Any person who meets both of the following
17 conditions shall be punished by imprisonment in a county
18 jail not exceeding one year or in the state prison for 16
19 months, or two or three years, or by a fine not exceeding
20 five thousand dollars (\$5,000), or by both that fine and
21 imprisonment:

22 (1) The person has been in violation of subdivision (a)
23 for more than six months, or has been convicted
24 previously of a violation of this subdivision, subdivision
25 (a), or paragraph (4) of subdivision (a) of Section 166
26 concerning child support.

27 (2) The person willfully omits, without lawful excuse,
28 to furnish necessary clothing, food, shelter, medical
29 attendance, or other remedial care, for his or her child.

30 (c) This section does not relieve a parent from the
31 criminal liability defined herein for an omission merely
32 because the other parent of the child is legally entitled to
33 the custody of the child, or the other parent of the child
34 or any other person or organization voluntarily or
35 involuntarily furnishes the necessary food, clothing,
36 shelter, medical attendance, or other remedial care for
37 the child or undertakes to do so.

38 (d) Proof of abandonment or desertion of a child by a
39 parent, or the omission by a parent to furnish necessary
40 food, clothing, shelter, or medical attendance, or other



1 remedial care for his or her child is prima facie evidence
2 that the abandonment or desertion or omission to furnish
3 necessary food, clothing, shelter, or medical attendance,
4 or other remedial care is willful and without lawful
5 excuse.

6 (e) Inability to pay may constitute an affirmative
7 defense to the element of willfulness. The court, in
8 determining the ability of the parent to support his or her
9 child, shall consider all assets and income available to the
10 parent, including social insurance benefits and gifts.

11 (f) This section is applicable whether the parents of
12 the child are or were ever married or divorced, and
13 without regard to whether or not an order for support of
14 the child has been made. A child conceived but not yet
15 born is to be deemed an existing person insofar as this
16 section is concerned.

17 (g) The husband of a woman who bears a child as a
18 result of artificial insemination shall be considered the
19 father of that child for the purpose of this section, if he
20 consented in writing to the artificial insemination.

21 (h) For the purposes of this section, “parent” shall
22 have the meaning provided in existing law as it relates to
23 the liability of a parent for the support of his or her child.

24 (i) If a parent provides a minor with treatment by
25 spiritual means through prayer alone in accordance with
26 the tenets and practices of a recognized church or
27 religious denomination, by a duly accredited practitioner
28 thereof, the treatment shall constitute “other remedial
29 care,” as used in this section.

30 (j) A felony conviction under subdivision (b) shall not
31 constitute a current felony conviction for purposes of
32 subdivisions (b) to (i), inclusive, of Section 667 or Section
33 1170.12.

34 SEC. 2. No reimbursement is required by this act
35 pursuant to Section 6 of Article XIII B of the California
36 Constitution because the only costs that may be incurred
37 by a local agency or school district will be incurred
38 because this act creates a new crime or infraction,
39 eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section



1 ~~17556 of the Government Code, or changes the definition~~
2 ~~of a crime within the meaning of Section 6 of Article~~
3 ~~XIII B of the California Constitution.~~

4 ~~Notwithstanding Section 17580 of the Government~~
5 ~~Code, unless otherwise specified, the provisions of this act~~
6 ~~shall become operative on the same date that the act~~
7 ~~takes effect pursuant to the California Constitution.~~

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