Assembly Bill No. 2786

Passed the Assembly August 31, 2010

_____

Chief Clerk of the Assembly

Passed the Senate August 30, 2010

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 120130 and 121025 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2786, Committee on Health. Reportable diseases and conditions.

Existing law requires the State Department of Public Health to establish a list of reportable communicable and noncommunicable diseases and conditions, including, but not limited to, diphtheria, listeria, salmonella, shigella, and streptococcal infection in food handlers or dairy workers, and typhoid. Existing law requires reporting by the local health officer of any disease or condition on the list. Violation of these provisions is a crime.

This bill would delete the specified list of required reportable diseases and conditions. The bill would require the department to establish a list of communicable diseases and conditions for which clinical laboratories are required to submit a culture or specimen to local and state public health laboratories, as specified.

Under existing law, no civil or criminal penalty, fine, sanction, finding, or denial, suspension, or revocation of licensure may be imposed on any person or facility based upon failure to provide notification of a reportable disease or condition unless the disease or condition was printed in the California Code of Regulations at least 6 months prior to the date of the claimed failure.

This bill would limit the above exemption to a licensed physician and surgeon or a clinical laboratory, and would extend the exemption to the submission of a culture or specimen, as required, and would require notification of the licensed physician and surgeon or clinical laboratory by the department and publication in the California Code of Regulations at least 6 months prior to the date of the claimed failure before a penalty, fine, sanction, finding, or denial, suspension, or revocation of licensure may be imposed.

Existing law prohibits the disclosure of public health records relating to HIV and AIDS, and the information contained in those records, with specified exceptions for public health purposes, or

pursuant to a written authorization. Existing law requires a disclosure of these records or information to include only the information necessary for the purpose of the disclosure, and to be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization. Existing law imposes civil penalties for the disclosure, whether negligent or willful and malicious, of the content of a confidential public health record, as defined, as well as specified criminal penalties, under certain circumstances.

This bill would expand the information disclosure provisions applicable to the information contained in public health records relating to HIV and AIDS, including when the person who is the subject of the record is coinfected with HIV/AIDS, tuberculosis, and a sexually transmitted disease, as specified. The bill would also increase the maximum civil penalties applicable for the disclosure of the content of a public health record, as specified.

This bill would incorporate additional changes to Section 120130 of the Health and Safety Code proposed by AB 2541, to be operative only if AB 2541 and this bill are both chaptered and become effective on or before January 1, 2011, and this bill is chaptered last.

To the extent that this bill would increase the duties of the local public health officer, and would change the definition of an existing crime, this bill would impose 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 people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The intent of the Legislature is to enable prompt identification of an outbreak, and rapid reporting and laboratory identification during an outbreak situation, the emergence of a new disease or condition, or the recognition of an identified disease or condition that may constitute a danger to the public's health. During this outbreak situation, it is absolutely imperative that positive specimens be sent to the public health laboratory for definitive identification, subtyping, strain typing, or DNA fingerprinting. The public health laboratory must obtain the necessary specimens from all sources in order to be able to quickly identify the organisms causing illnesses and compare the subtypes, thus allowing a timely public health response.

(b) By authorizing the State Department of Public Health to quickly change the list of specimens that must be submitted to the public health laboratory without going through the administrative regulation and rulemaking process, this process would enable the department to include newly emerging diseases and conditions in a timely manner. Having this authority will allow a more rapid response by public health officers to an emerging communicable disease or outbreak.

(c) Recently, there have been several outbreaks of communicable diseases affecting the health of the public for which rapid identification, subtyping of the organism, and immediate public health response have been necessary. The most recent of these episodes include E. coli in spinach and salmonella in peanut butter, both affecting the health of a large number of people, nationwide.

(d) Without the ability to rapidly change the requirements for submission of specimens for testing, the identification of the organism causing the outbreak and the public health response would be significantly hampered.

SEC. 2. Section 120130 of the Health and Safety Code is amended to read:

120130. (a) The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section. The list of reportable diseases and conditions may include both communicable and noncommunicable diseases. The list may include those diseases that are either known

to be, or suspected of being, transmitted by milk or milk-based products. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers. Modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the revised list shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e). Those diseases listed as reportable shall be properly reported as required to the department by the health officer.

(b) The department shall establish a list of communicable diseases and conditions for which clinical laboratories shall submit a culture or a specimen to the local public health laboratory to undergo characterization. The list shall set forth the conditions under which the culture and specimen shall also be submitted to the state public health laboratory to undergo further characterization. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers and the California Association of Public Health Laboratory Directors. Both establishment and modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the initial list and any modifications shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e).

(c) The department may from time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

(d) The health officer may require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when this action is necessary for the protection of the public health.

(e) The lists established pursuant to subdivisions (a) and (b) and any subsequent modifications shall be published in Title 17 of the California Code of Regulations.

(f) Notwithstanding any other provision of law, no civil or criminal penalty, fine, sanction, finding, or denial, suspension, or revocation of licensure for any licensed physician and surgeon or clinical laboratory may be imposed based upon a failure to provide the notification of a reportable disease or condition or to provide the submission of a culture or specimen that is required pursuant to this section, unless the name of the disease or condition that is required to be reported or for which a culture or specimen is required to be submitted was printed in the California Code of Regulations and the department notified the licensed physician and surgeon or clinical laboratory of the disease or condition at least six months prior to the date of the claimed failure to report or submit.

(g) Commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, a report generated pursuant to this section by a laboratory shall be submitted electronically in a manner specified by the department, except that this electronic reporting requirement shall not apply to reports of HIV infections. The department shall allow laboratories that receive incomplete patient information to report the name of the provider who submitted the request to the local health officer.

(h) The department may, on its Internet Web site and via electronic mail, advise out-of-state laboratories that are known to the department to test specimens from California residents of the new reporting requirements.

SEC. 2.5. Section 120130 of the Health and Safety Code is amended to read:

120130. (a) The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section. The list of reportable diseases and conditions may include both communicable and noncommunicable diseases. The list may include those diseases that are either known to be, or suspected of being, transmitted by milk or milk-based

products. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers. Modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the revised list shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e). Those diseases listed as reportable shall be properly reported as required to the department by the health officer.

(b) The department shall establish a list of communicable diseases and conditions for which clinical laboratories shall submit a culture or a specimen to the local public health laboratory to undergo characterization. The list shall set forth the conditions under which the culture and specimen shall also be submitted to the state public health laboratory to undergo further characterization. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers and the California Association of Public Health Laboratory Directors. Both establishment and modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the initial list and any modifications shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e).

(c) The department may from time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

(d) The health officer may require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when this action is necessary for the protection of the public health.

(e) The lists established pursuant to subdivisions (a) and (b) and any subsequent modifications shall be published in Title 17 of the California Code of Regulations.

(f) Notwithstanding any other provision of law, no civil or criminal penalty, fine, sanction, finding, or denial, suspension, or revocation of licensure for a licensed physician and surgeon or a clinical laboratory may be imposed based upon a failure to provide the notification of a reportable disease or condition or to provide the submission of a culture or specimen that is required pursuant to this section, unless the name of the disease or condition that is required to be reported or for which the culture or specimen is required to be submitted was printed in the California Code of Regulations and the department notified the licensed physician and surgeon or clinical laboratory of the disease or condition at least six months prior to the date of the claimed failure to report or submit.

(g) Commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, a report generated pursuant to this section or Section 121022 by a laboratory shall be submitted electronically in a manner specified by the department. The department shall allow laboratories that receive incomplete patient information to report the name of the provider who submitted the request to the local health officer.

(h) The department may, through its Internet Web site and via electronic mail, advise out-of-state laboratories that are known to the department to test specimens from California residents of the new reporting requirements.

SEC. 3. 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 (f) 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) Except as provided in paragraphs (1) to (3), inclusive, any disclosure authorized by subdivision (a) or (b) shall include only the information necessary for the purpose of that disclosure and shall be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization, as described in subdivision (a).

(1) Notwithstanding any other provision of law, the following disclosures shall be authorized for the purpose of enhancing completeness of HIV/AIDS, tuberculosis, and sexually transmitted disease coinfection reporting to the federal Centers for Disease Control and Prevention (CDC):

(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.

(2) Notwithstanding any other provision of 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.

(3) Notwithstanding any other provision of law, for the purpose of facilitating appropriate medical care and treatment of persons coinfected with HIV, tuberculosis, and syphilis, gonorrhea, or chlamydia, local public health agency sexually transmitted disease control and tuberculosis control staff may further disclose the information to state or local public health agency sexually transmitted 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, and sexually transmitted disease care.

(4) For the purposes of paragraphs (2) and (3), "staff" does not include nongovernmental entities.

(d) No confidential public health record, as defined in subdivision (c) of Section 121035, shall be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(e) (1) Any person who negligently discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any 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, which penalty and costs shall be paid to the person whose record was disclosed.

(2) Any person who willfully or maliciously discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any 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, which penalty and costs shall be paid to the person whose confidential public health record was disclosed.

(3) Any person who willfully, maliciously, or negligently discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any 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 the 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, which penalty and costs shall be paid to the person whose confidential public health record was disclosed.

(4) Any person who commits any 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) Nothing in this section limits or expands 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 any person.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 120130 of the Health and Safety Code proposed by both this bill and AB 2541. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 120130 of the Health and Safety Code, and (3) this bill is enacted after AB 2541, in which case Section 2 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other 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.

Approved _____, 2010

_____

Governor