

AMENDED IN ASSEMBLY MARCH 11, 2010

AMENDED IN ASSEMBLY JULY 16, 2009

AMENDED IN ASSEMBLY JULY 2, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 220

**Introduced by Senator Yee
(Coauthor: Senator DeSaulnier)**

February 23, 2009

An act to amend Sections 8547.2, 8547.8, 19683, and 19683.5 of the Government Code, relating to whistleblower protections. An act to add Section 1367.27 to the Health and Safety Code, and to add Section 10123.175 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 220, as amended, Yee. ~~Whistleblower protection.~~ *Health care coverage: tobacco cessation services.*

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Under existing law, a health care service plan and a health insurer are required to provide coverage for specified tests, including all generally medically accepted cancer screening tests.

This bill would require certain health care service plan contracts and health insurance policies that provide outpatient prescription drug benefits to also provide coverage for tobacco cessation services and would impose limits on copayments for those services.

Because a willful violation of the bill's provisions relative to health care service plans would be a crime, the 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 no reimbursement is required by this act for a specified reason.

~~(1) The California Whistleblower Protection Act authorizes a state employee or an applicant for state employment to file a complaint, as specified, with the State Personnel Board alleging reprisal, retaliation, threats, coercion, or similar improper conduct prohibited under the act.~~

~~This bill would in addition provide that the act applies to former employees, as specified, and to an individual appointed by the Legislature to a state board or commission and who is not a Member or employee of the Legislature. The bill would also prohibit retaliation in the form of decreasing the job responsibilities of an employee's normal workload.~~

~~(2) Existing law provides that in addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure is liable in an action for damages brought against him or her by the injured party. However, any action for damages is not available to the injured party unless the injured party has first filed a complaint with the State Personnel Board, as specified, and the board has issued, or failed to issue, findings, as specified. For purposes of these provisions, protected disclosure means any good faith communication that discloses or demonstrates an intention to disclose information that may evidence an improper governmental activity or any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was for the purpose of remedying that condition.~~

~~This bill would also require that when the injured party has requested a right-to-sue notice from the board, as provided, that request must be made before an action for damages is available. The existing definition of protected disclosure would be revised to specifically include any communication based on, or when carrying out, job duties, that otherwise falls within the definition above. The bill would modify the~~

definition of improper governmental activity to include any activity by an employee that is undertaken inside a state office, or, if undertaken outside a state office, directly relates to the functioning of state government. The bill would also expand the definition of protected disclosure to specifically include any good faith communication to the Bureau of State Audits alleging an improper governmental activity and any evidence delivered to the Bureau of State Audits in support of the allegation.

(3) Existing law requires the State Personnel Board to initiate a hearing or investigation of a written complaint of reprisal or retaliation that is prohibited by the California Whistleblower Protection Act within 10 working days of its submission. The executive officer is required to complete findings of the hearing or investigation within 60 working days thereafter and provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, employee, or appointing authority. Within 60 days after receiving notification regarding a prohibited act, the appointing power must either serve notice of adverse action, as specified, or set forth in writing its reasons for not doing so. Existing law permits the supervisor, manager, employee, or appointing power to request a hearing before the State Personnel Board regarding the findings of the executive officer if the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities. Existing law provides that every person who violates these provisions is guilty of a misdemeanor.

This bill would instead require the board to either initiate a hearing or investigation of a written complaint of any improper acts prohibited by the act within 10 working days of its submission, or, upon written request of the complaining person submitted to the board within 10 working days of the submission of a complaint, issue a right-to-sue notice containing specified information to the person within 10 working days of the request, instead of initiating a hearing or investigation. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(4) Existing law provides that if, after the hearing described in (4) above, the State Personnel Board determines that a violation of the California Whistleblower Protection Act occurred, or if no hearing is requested and the findings of the executive officer conclude that

~~improper activity has occurred, the board may order any appropriate relief.~~

~~This bill would specify that appropriate relief may include, but would not be limited to, at the employee's request and with the employee's consent, transfer to or placement in any vacant position for which the employee is qualified.~~

~~(5) Existing law requires a public entity that provides for the defense of a state employee charged with a violation of the California Whistleblower Protection Act to reserve all rights to be reimbursed for any costs incurred in that defense. If a state employee is found to have violated the act, he or she is liable for all defense costs and is required to reimburse the public entity for those costs.~~

~~This bill would provide that if a state employee is successful in an action brought before the board pursuant to those provisions, the complaining employee shall be reimbursed for all costs incurred, including reasonable attorney's fees.~~

~~This bill would also require the administrative law judge to make any orders that may appear just in order to prevent any named party from being embarrassed, delayed, or put to unnecessary expense, and may make other orders as the interests of justice may require during the administrative hearing, in all cases.~~

~~The bill would also make technical, conforming changes to those provisions.~~

~~(6) 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: 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. *The Legislature finds and declares the following:*
- 2 (a) *Providing tobacco cessation counseling and medication is*
- 3 *one of the most clinically effective and cost-effective health services*
- 4 *available, second only to inoculations. Tobacco cessation is five*
- 5 *to 80 times more cost effective than pharmacologic interventions*
- 6 *used to prevent heart attacks.*

1 (b) More than 70 percent of smokers wish they could quit
2 tobacco, and each year one of every two smokers attempts to quit.
3 However, the unassisted successful tobacco quit rate has remained
4 constant at less than five percent. Access to counseling and
5 pharmaceutical benefits doubles the successful quit rate and has
6 achieved quit rates of 25 to 30 percent. Experience in health plans
7 indicates that access to all cessation services saves four dollars
8 (\$4) for every dollar (\$1) invested.

9 (c) Each adult smoker costs employers one thousand seven
10 hundred sixty dollars (\$1,760) in lost productivity and one
11 thousand six hundred twenty-three dollars (\$1,623) in excess
12 medical expenditures. Men who smoke incur fifteen thousand eight
13 hundred dollars (\$15,800) more in lifetime medical expenses than
14 do men who do not smoke. For employers, the ultimate financial
15 return is between five dollars (\$5) and six dollars (\$6) for every
16 dollar spent on tobacco cessation.

17 (d) Because of member transfers between plans, financial
18 savings and tobacco-related disease reductions are effective only
19 if universally available to the entire insured population. Therefore,
20 a mandate on all plans and insurers to provide cost-effective
21 treatment is necessary and beneficial.

22 (e) It is the intent of the Legislature that this act diminish the
23 statewide economic and personal cost of tobacco addiction by
24 making tobacco cessation treatments available to all smokers.
25 California has successfully reduced tobacco consumption in the
26 last decade, but, despite that success, tobacco use is responsible
27 for the unnecessary deaths of 40,000 residents and remains the
28 leading cause of preventable death in this state. Annually, tobacco
29 addiction costs California \$8.6 billion in direct medical costs,
30 which is approximately 12 percent of all health care costs.

31 SEC. 2. Section 1367.27 is added to the Health and Safety
32 Code, to read:

33 1367.27. (a) A health care service plan contract, except a
34 specialized health care service plan contract, that is issued,
35 amended, delivered, or renewed on or after July 1, 2011, that
36 provides outpatient prescription drug benefits, shall include
37 coverage for tobacco cessation services that include two courses
38 of treatment in a 12-month period including personal counseling,
39 which may be telephone or individual counseling, and
40 FDA-approved medication for tobacco cessation, including

1 *prescription and over-the-counter medications. Covered treatment*
2 *shall comply with the Public Health Service sponsored 2008*
3 *clinical practice guideline, “Treating Tobacco Use and*
4 *Dependence: 2008 Update,” or its successors.*

5 *(b) No copayment or deductible shall be applied to benefits for*
6 *over-the-counter tobacco cessation medications. Copayments for*
7 *each course or treatment or prescription shall not exceed fifteen*
8 *dollars (\$15).*

9 *(c) A health care service plan may contract with qualified local,*
10 *statewide, or national providers, whether for profit or nonprofit,*
11 *for the provision of services under this section.*

12 *(d) A health care service plan shall disclose the benefits under*
13 *this section in its evidence of coverage and disclosure forms and*
14 *communicate the availability of coverage to all enrollees.*

15 *(e) The coverage provided pursuant to this section shall only*
16 *be available upon the order of an authorized provider. Nothing in*
17 *this subdivision shall preclude a plan from allowing enrollees to*
18 *access tobacco cessation services on a self-referral basis.*

19 *SEC. 3. Section 10123.175 is added to the Insurance Code, to*
20 *read:*

21 *10123.175. (a) Every individual or group health insurance*
22 *policy that is issued, amended, delivered, or renewed on or after*
23 *July 1, 2011, that provides outpatient prescription drug benefits,*
24 *shall include coverage for tobacco cessation services that include*
25 *two courses of treatment in a 12-month period including personal*
26 *counseling, which may be telephone or individual counseling, and*
27 *FDA-approved medication for tobacco cessation, including*
28 *prescription and over-the-counter medications. Covered treatment*
29 *shall comply with the Public Health Service sponsored 2008*
30 *clinical practice guideline, “Treating Tobacco Use and*
31 *Dependence: 2008 Update,” or its successors.*

32 *(b) No copayment or deductible shall be applied to benefits for*
33 *over-the-counter tobacco cessation medications. Copayments for*
34 *each course or treatment or prescription shall not exceed fifteen*
35 *dollars (\$15).*

36 *(c) A health insurer may contract with qualified local, statewide,*
37 *or national providers, whether for profit or nonprofit, for the*
38 *provision of services under this section.*

1 (d) An insurer shall disclose the benefits under this section in
2 its evidence of coverage and disclosure forms and communicate
3 the availability of coverage to all insureds.

4 (e) The coverage provided pursuant to this section shall only
5 be available upon the order of an authorized provider. Nothing in
6 this subdivision shall preclude an insurer from allowing insureds
7 to access tobacco cessation services on a self-referral basis.

8 (f) This section shall not apply to a Medicare supplement,
9 short-term limited duration health insurance, vision-only,
10 dental-only, or Champus-supplement insurance, or to hospital
11 indemnity, hospital-only, accident-only, or specified disease
12 insurance that does not pay benefits on a fixed benefit, cash
13 payment only basis.

14 SEC. 4. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

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25 **All matter omitted in this version of the bill**
26 **appears in the bill as amended in the**
27 **Assembly, July 16, 2009. (JR11)**
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