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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1628

Introduced by Assembly Member Beall
(Principal coauthor: Senator Alquist)

February 9, 2012

An act to amend Sections 340.1 and 1002 of the Code of Civil Procedure, and to amend Section 11166 of, and to add Section 11166.6 to, the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1628, as amended, Beall. Child abuse.

(1) Existing law generally requires an action for recovery of damages against a person suffered as a result of childhood sexual abuse to be commenced within 8 years of the date the plaintiff attains the age of majority or within 3 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever occurs later. Under existing law, certain actions may not be brought against a person or entity on or after the plaintiff's 26th birthday.

This bill would instead provide that any of those actions may be commenced until the plaintiff attains the age of 35 or within 3 years of the date the plaintiff discovers or reasonably should have discovered the psychological injury or illness after the age of majority was caused by the sexual abuse, whichever occurs later, and would delete the

provisions prohibiting certain actions from being brought on or after the plaintiff's 26th birthday.

(2) Existing law prohibits a confidential settlement agreement in a civil action the factual foundation for which establishes a cause of action for an act that may be prosecuted as a felony sex offense, and further makes those provisions inapplicable to a settlement agreement or stipulated agreement that requires the nondisclosure of the amount of any money paid in a settlement of a claim.

This bill would delete those provisions and instead would prohibit any confidential settlement in a civil action seeking damages that is based in whole or in part on an act of childhood sexual abuse. The bill would make an agreement entered into on or after January 1, 2013, containing a confidential settlement provision void as a matter of law and against public policy, ~~and would make a violation of those provisions by a party or any attorney a misdemeanor punishable by a fine of \$1,000.~~ The bill would also specify that an attorney who demands a confidential settlement agreement as set forth above shall be subject to disciplinary action by the State Bar. ~~By creating a new crime, the bill would impose a state-mandated local program.~~

(3) Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine. Existing law prohibits a supervisor or administrator from inhibiting a mandated reporter from making a report, authorizes supervisors and administrators of mandated reporters to implement procedures to facilitate the reporting of child abuse and neglect, and prohibits a person from being sanctioned for making the report.

This bill would require any private entity conducting business in the state that has employees, members, agents, licensees, or representatives who are either mandated reporters or ~~whose duties involve close interaction with children on a regular basis~~ *who work directly in an unaccompanied setting with minor children on more than an incidental and occasional basis or have supervisory or disciplinary power over minor children* to designate an employee to receive complaints of suspected child abuse, and to implement an internal procedure for

employees, members, agencies, licensees, or representatives of the private entity to report any incident of suspected child abuse to the designated employee. The bill would specify that the private entity is prohibited from sanctioning a person for making a report. ~~The bill, and would also require a the private entity doing business in the state that rents, leases, or uses public property and has an employee, member, agent, licensee, or representative who will access the property and who has duties involving close interaction with children on a regular basis, as defined, to perform an enhanced background check checks, as specified, on the employee, member, agent, licensee, or representative. The bill would require the private entity to indemnify the public entity against claims from liability from claims for child abuse or neglect based on the private entity's use of the public property, and to maintain an insurance policy in an amount of not less than \$1,000,000 for the benefit of the public entity the employees, members, agents, licensees, or representatives described above.~~ The bill would make a violation of those provisions a misdemeanor punishable by up to 6 months confinement in a county jail or by a fine of \$1,000, or by both that imprisonment and fine. Because the bill would create a new crime, the bill would impose a state-mandated local program.

(4) 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. Section 340.1 of the Code of Civil Procedure is
- 2 amended to read:
- 3 340.1. (a) In an action against a person or entity for recovery
- 4 of damages suffered as a result of childhood sexual abuse, the time
- 5 for commencement of the action shall be until the date the plaintiff
- 6 attains the age of 35, or within three years of the date the plaintiff
- 7 discovers or reasonably should have discovered that psychological
- 8 injury or illness occurring after the age of majority was caused by
- 9 the sexual abuse, whichever period expires later.

(b) (1) “Childhood sexual abuse” as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under 18 years of age and that would have been proscribed under any of the following:

(A) Section 266j of the Penal Code.

(B) Section 285 of the Penal Code.

(C) Paragraph (1) or (2) of subdivision (b) of, or subdivision (c) of, Section 286 of the Penal Code.

(D) Subdivision (a) or (b) of Section 288 of the Penal Code.

(E) Paragraph (1) or (2) of subdivision (b) of, or subdivision (c) of, Section 288a of the Penal Code.

(F) Subdivision (h), (i), or (j) of Section 289 of the Penal Code.

(G) Section 647.6 of the Penal Code.

(H) Any prior laws of this state of similar effect at the time the act was committed.

(2) Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.

(3) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this section.

(c) Every plaintiff 35 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (d).

(d) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts that support the declaration:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. The person consulted may not be a party to the litigation.

(2) That the mental health practitioner consulted is licensed to practice and practices in this state and is not a party to the action,

1 that the practitioner is not treating and has not treated the plaintiff,
2 and that the practitioner has interviewed the plaintiff and is
3 knowledgeable of the relevant facts and issues involved in the
4 particular action, and has concluded, on the basis of his or her
5 knowledge of the facts and issues, that in his or her professional
6 opinion there is a reasonable basis to believe that the plaintiff had
7 been subject to childhood sexual abuse.

8 (3) That the attorney was unable to obtain the consultation
9 required by paragraph (1) because a statute of limitations would
10 impair the action and that the certificates required by paragraphs
11 (1) and (2) could not be obtained before the impairment of the
12 action. If a certificate is executed pursuant to this paragraph, the
13 certificates required by paragraphs (1) and (2) shall be filed within
14 60 days after filing the complaint.

15 (e) Where certificates are required pursuant to subdivision (c),
16 the attorney for the plaintiff shall execute a separate certificate of
17 merit for each defendant named in the complaint.

18 (f) In any action subject to subdivision (c), no defendant may
19 be served, and the duty to serve a defendant with process does not
20 attach, until the court has reviewed the certificates of merit filed
21 pursuant to subdivision (d) with respect to that defendant, and has
22 found, in camera, based solely on those certificates of merit, that
23 there is reasonable and meritorious cause for the filing of the action
24 against that defendant. At that time, the duty to serve that defendant
25 with process shall attach.

26 (g) A violation of this section may constitute unprofessional
27 conduct and may be the grounds for discipline against the attorney.

28 (h) The failure to file certificates in accordance with this section
29 shall be grounds for a demurrer pursuant to Section 430.10 or a
30 motion to strike pursuant to Section 435.

31 (i) In any action subject to subdivision (c), no defendant may
32 be named except by “Doe” designation in any pleadings or papers
33 filed in the action until there has been a showing of corroborative
34 fact as to the charging allegations against that defendant.

35 (j) At any time after the action is filed, the plaintiff may apply
36 to the court for permission to amend the complaint to substitute
37 the name of the defendant or defendants for the fictitious
38 designation, as follows:

39 (1) The application shall be accompanied by a certificate of
40 corroborative fact executed by the attorney for the plaintiff. The

1 certificate shall declare that the attorney has discovered one or
2 more facts corroborative of one or more of the charging allegations
3 against a defendant or defendants, and shall set forth in clear and
4 concise terms the nature and substance of the corroborative fact.
5 If the corroborative fact is evidenced by the statement of a witness
6 or the contents of a document, the certificate shall declare that the
7 attorney has personal knowledge of the statement of the witness
8 or of the contents of the document, and the identity and location
9 of the witness or document shall be included in the certificate. For
10 purposes of this section, a fact is corroborative of an allegation if
11 it confirms or supports the allegation. The opinion of any mental
12 health practitioner concerning the plaintiff shall not constitute a
13 corroborative fact for purposes of this section.

14 (2) Where the application to name a defendant is made prior to
15 that defendant's appearance in the action, neither the application
16 nor the certificate of corroborative fact by the attorney shall be
17 served on the defendant or defendants, nor on any other party or
18 their counsel of record.

19 (3) Where the application to name a defendant is made after
20 that defendant's appearance in the action, the application shall be
21 served on all parties and proof of service provided to the court,
22 but the certificate of corroborative fact by the attorney shall not
23 be served on any party or their counsel of record.

24 (k) The court shall review the application and the certificate of
25 corroborative fact in camera and, based solely on the certificate
26 and any reasonable inferences to be drawn from the certificate,
27 shall, if one or more facts corroborative of one or more of the
28 charging allegations against a defendant has been shown, order
29 that the complaint may be amended to substitute the name of the
30 defendant or defendants.

31 (l) The court shall keep under seal and confidential from the
32 public and all parties to the litigation, other than the plaintiff, any
33 and all certificates of corroborative fact filed pursuant to
34 subdivision (j).

35 (m) Upon the favorable conclusion of the litigation with respect
36 to any defendant for whom a certificate of merit was filed or for
37 whom a certificate of merit should have been filed pursuant to this
38 section, the court may, upon the motion of a party or upon the
39 court's own motion, verify compliance with this section by
40 requiring the attorney for the plaintiff who was required by

1 subdivision (d) to execute the certificate to reveal the name,
2 address, and telephone number of the person or persons consulted
3 with pursuant to subdivision (d) that were relied upon by the
4 attorney in preparation of the certificate of merit. The name,
5 address, and telephone number shall be disclosed to the trial judge
6 in camera and in the absence of the moving party. If the court finds
7 there has been a failure to comply with this section, the court may
8 order a party, a party's attorney, or both, to pay any reasonable
9 expenses, including attorney's fees, incurred by the defendant for
10 whom a certificate of merit should have been filed.

11 (n) The amendments to this section enacted at the 1990 portion
12 of the 1989–90 Regular Session shall apply to any action
13 commenced on or after January 1, 1991, including any action
14 otherwise barred by the period of limitations in effect prior to
15 January 1, 1991, thereby reviving those causes of action which
16 had lapsed or technically expired under the law existing prior to
17 January 1, 1991.

18 (o) The Legislature declares that it is the intent of the
19 Legislature, in enacting the amendments to this section enacted at
20 the 1994 portion of the 1993–94 Regular Session, that the express
21 language of revival added to this section by those amendments
22 shall apply to any action commenced on or after January 1, 1991.

23 (p) Nothing in the amendments to this section enacted at the
24 1998 portion of the 1997–98 Regular Session is intended to create
25 a new theory of liability.

26 (q) The amendments to subdivision (a) of this section, enacted
27 at the 1998 portion of the 1997–98 Regular Session, shall apply
28 to any action commenced on or after January 1, 1999, and to any
29 action filed prior to January 1, 1999, and still pending on that date,
30 including any action or causes of action which would have been
31 barred by the laws in effect prior to January 1, 1999. Nothing in
32 this subdivision is intended to revive actions or causes of action
33 as to which there has been a final adjudication prior to January 1,
34 1999.

35 (r) *The amendments to this section enacted at the 2011–12*
36 *Regular Session are not intended to revive any action or cause of*
37 *action for which the statute of limitations expired on or before*
38 *December 31, 2012.*

39 SEC. 2. Section 1002 of the Code of Civil Procedure is
40 amended to read:

1002. (a) Notwithstanding any other provision of law, a confidential settlement agreement is prohibited in any civil action seeking damages that is based in whole or in part on an act of childhood sexual abuse, as defined in Section 340.1.

(b) Subdivision (a) does not preclude an agreement preventing the defendant or any person acting on his or her behalf from disclosing any medical information or personal identifying information, as defined in subdivision (b) of Section 530.55 of the Penal Code, regarding the victim of the childhood sexual abuse or of any information revealing the nature of the relationship between the victim and the defendant. This subdivision shall not be construed to limit the right of a crime victim to disclose this information.

(c) An agreement described in subdivision (a) that is entered into on or after January 1, 2013, is void as a matter of law and against public policy. ~~A party or attorney who agrees to a confidential settlement agreement described in subdivision (a) is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).~~ Any attorney who demands a confidential settlement described in subdivision (a) as a condition of settlement shall be subject to disciplinary action by the State Bar.

SEC. 3. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, “reasonable suspicion” means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like

1 position, drawing, when appropriate, on his or her training and
2 experience, to suspect child abuse or neglect. “Reasonable
3 suspicion” does not require certainty that child abuse or neglect
4 has occurred nor does it require a specific medical indication of
5 child abuse or neglect; any “reasonable suspicion” is sufficient.
6 For the purpose of this article, the pregnancy of a minor does not,
7 in and of itself, constitute a basis for a reasonable suspicion of
8 sexual abuse.

9 (2) The agency shall be notified and a report shall be prepared
10 and sent, faxed, or electronically transmitted even if the child has
11 expired, regardless of whether or not the possible abuse was a
12 factor contributing to the death, and even if suspected child abuse
13 was discovered during an autopsy.

14 (3) Any report made by a mandated reporter pursuant to this
15 section shall be known as a mandated report.

16 (b) If after reasonable efforts a mandated reporter is unable to
17 submit an initial report by telephone, he or she shall immediately
18 or as soon as is practicably possible, by fax or electronic
19 transmission, make a one-time automated written report on the
20 form prescribed by the Department of Justice, and shall also be
21 available to respond to a telephone followup call by the agency
22 with which he or she filed the report. A mandated reporter who
23 files a one-time automated written report because he or she was
24 unable to submit an initial report by telephone is not required to
25 submit a written followup report.

26 (1) The one-time automated written report form prescribed by
27 the Department of Justice shall be clearly identifiable so that it is
28 not mistaken for a standard written followup report. In addition,
29 the automated one-time report shall contain a section that allows
30 the mandated reporter to state the reason the initial telephone call
31 was not able to be completed. The reason for the submission of
32 the one-time automated written report in lieu of the procedure
33 prescribed in subdivision (a) shall be captured in the Child Welfare
34 Services/Case Management System (CWS/CMS). The department
35 shall work with stakeholders to modify reporting forms and the
36 CWS/CMS as is necessary to accommodate the changes enacted
37 by these provisions.

38 (2) This subdivision shall not become operative until the
39 CWS/CMS is updated to capture the information prescribed in this
40 subdivision.

1 (3) This subdivision shall become inoperative three years after
2 this subdivision becomes operative or on January 1, 2009,
3 whichever occurs first.

4 (4) On the inoperative date of these provisions, a report shall
5 be submitted to the counties and the Legislature by the State
6 Department of Social Services that reflects the data collected from
7 automated one-time reports indicating the reasons stated as to why
8 the automated one-time report was filed in lieu of the initial
9 telephone report.

10 (5) Nothing in this section shall supersede the requirement that
11 a mandated reporter first attempt to make a report via telephone,
12 or that agencies specified in Section 11165.9 accept reports from
13 mandated reporters and other persons as required.

14 (c) Any mandated reporter who fails to report an incident of
15 known or reasonably suspected child abuse or neglect as required
16 by this section is guilty of a misdemeanor punishable by up to six
17 months confinement in a county jail or by a fine of one thousand
18 dollars (\$1,000) or by both that imprisonment and fine. If a
19 mandated reporter willfully conceals his or her failure to report an
20 incident known by the mandated reporter to be abuse or severe
21 neglect under this section, the failure to report is a continuing
22 offense until an agency specified in Section 11165.9 discovers the
23 offense.

24 (d) (1) A clergy member who acquires knowledge or a
25 reasonable suspicion of child abuse or neglect during a penitential
26 communication is not subject to subdivision (a). For the purposes
27 of this subdivision, "penitential communication" means a
28 communication, intended to be in confidence, including, but not
29 limited to, a sacramental confession, made to a clergy member
30 who, in the course of the discipline or practice of his or her church,
31 denomination, or organization, is authorized or accustomed to hear
32 those communications, and under the discipline, tenets, customs,
33 or practices of his or her church, denomination, or organization,
34 has a duty to keep those communications secret.

35 (2) Nothing in this subdivision shall be construed to modify or
36 limit a clergy member's duty to report known or suspected child
37 abuse or neglect when the clergy member is acting in some other
38 capacity that would otherwise make the clergy member a mandated
39 reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone and shall prepare and send, fax, or electronically transmit a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.

1 (5) Exhibition of the genitals, pubic, or rectal areas of any person
2 for the purpose of sexual stimulation of the viewer.

3 (f) Any mandated reporter who knows or reasonably suspects
4 that the home or institution in which a child resides is unsuitable
5 for the child because of abuse or neglect of the child shall bring
6 the condition to the attention of the agency to which, and at the
7 same time as, he or she makes a report of the abuse or neglect
8 pursuant to subdivision (a).

9 (g) Any other person who has knowledge of or observes a child
10 whom he or she knows or reasonably suspects has been a victim
11 of child abuse or neglect may report the known or suspected
12 instance of child abuse or neglect to an agency specified in Section
13 11165.9. For purposes of this section, “any other person” includes
14 a mandated reporter who acts in his or her private capacity and
15 not in his or her professional capacity or within the scope of his
16 or her employment.

17 (h) When two or more persons, who are required to report,
18 jointly have knowledge of a known or suspected instance of child
19 abuse or neglect, and when there is agreement among them, the
20 telephone report may be made by a member of the team selected
21 by mutual agreement and a single report may be made and signed
22 by the selected member of the reporting team. Any member who
23 has knowledge that the member designated to report has failed to
24 do so shall thereafter make the report.

25 (i) (1) The reporting duties under this section are individual. A
26 supervisor, administrator, or private entity employer, *as* described
27 in Section 11166.6, of a person required to report pursuant to this
28 section shall not impede or inhibit the reporting duties specified
29 in this section, and a person making a report shall not be subject
30 to any sanction for making the report. However, internal procedures
31 to facilitate reporting and apprise supervisors and administrators
32 of reports may be established provided that they are consistent
33 with this article.

34 (2) The internal procedures shall not require any employee
35 required to make reports pursuant to this article to disclose his or
36 her identity to the employer.

37 (3) Reporting the information regarding a case of possible child
38 abuse or neglect to an employer, supervisor, school principal,
39 school counselor, coworker, or other person shall not be a substitute

1 for making a mandated report to an agency specified in Section
2 11165.9.

3 (j) A county probation or welfare department shall immediately,
4 or as soon as practicably possible, report by telephone, fax, or
5 electronic transmission to the law enforcement agency having
6 jurisdiction over the case, to the agency given the responsibility
7 for investigation of cases under Section 300 of the Welfare and
8 Institutions Code, and to the district attorney's office every known
9 or suspected instance of child abuse or neglect, as defined in
10 Section 11165.6, except acts or omissions coming within
11 subdivision (b) of Section 11165.2, or reports made pursuant to
12 Section 11165.13 based on risk to a child that relates solely to the
13 inability of the parent to provide the child with regular care due
14 to the parent's substance abuse, which shall be reported only to
15 the county welfare or probation department. A county probation
16 or welfare department also shall send, fax, or electronically transmit
17 a written report thereof within 36 hours of receiving the information
18 concerning the incident to any agency to which it makes a
19 telephone report under this subdivision.

20 (k) A law enforcement agency shall immediately, or as soon as
21 practicably possible, report by telephone, fax, or electronic
22 transmission to the agency given responsibility for investigation
23 of cases under Section 300 of the Welfare and Institutions Code
24 and to the district attorney's office every known or suspected
25 instance of child abuse or neglect reported to it, except acts or
26 omissions coming within subdivision (b) of Section 11165.2, which
27 shall be reported only to the county welfare or probation
28 department. A law enforcement agency shall report to the county
29 welfare or probation department every known or suspected instance
30 of child abuse or neglect reported to it which is alleged to have
31 occurred as a result of the action of a person responsible for the
32 child's welfare, or as the result of the failure of a person responsible
33 for the child's welfare to adequately protect the minor from abuse
34 when the person responsible for the child's welfare knew or
35 reasonably should have known that the minor was in danger of
36 abuse. A law enforcement agency also shall send, fax, or
37 electronically transmit a written report thereof within 36 hours of
38 receiving the information concerning the incident to any agency
39 to which it makes a telephone report under this subdivision.

40 SEC. 4. Section 11166.6 is added to the Penal Code, to read:

1 11166.6. (a) Any private entity conducting business in this
2 state that has employees, members, agents, licensees, or
3 representatives who are either mandated reporters or ~~whose duties~~
4 ~~involve close interaction with children on a regular basis who work~~
5 *directly in an unaccompanied setting with minor children on more*
6 *than an incidental and occasional basis or have supervisory or*
7 *disciplinary power over minor children* shall do all of the
8 following:

9 (1) Designate an employee to receive complaints of suspected
10 child abuse.

11 (2) Implement an internal procedure for employees, members,
12 agents, licensees, or representatives to report any incident of
13 suspected child abuse to a designated employee, and distribute a
14 written copy of the procedure to all employees. The procedure
15 shall identify the employee who the private entity has designated
16 to receive complaints of suspected child abuse, and shall specify
17 that a person who reports a complaint of suspected child abuse
18 shall not be subject to any sanction for making the report. The
19 procedure shall be consistent with the provisions of Section 11166.

20 (3) Ensure that a mandated report has been made in accordance
21 with Section 11166. A single report may be made in accordance
22 with the provisions of subdivision (h) of Section 11166.

23 (b) For purposes of this section, “private entity” means any
24 entity that is registered, incorporated, or has its principal place of
25 business in this state.

26 (c) ~~(1) A private entity conducting business in this state that~~
27 ~~rents, leases, or uses public property where an employee, member,~~
28 ~~agent, licensee, or representative of the private entity will access~~
29 ~~the public property and has duties involving close interaction with~~
30 ~~children on a regular basis~~ *has employees, members, agents,*
31 *licensees, or representatives who are either mandated reporters*
32 *or who work directly in an unaccompanied setting with minor*
33 *children on more than an incidental and occasional basis or have*
34 *supervisory or disciplinary power over minor children* shall
35 conduct an enhanced background check on the employee, member,
36 agent, licensee, or representative that includes, but is not limited
37 to, the following:

38 ~~(A) Three~~

39 ~~(1) A past employment checks check.~~

40 ~~(B) Three~~

1 (2) A reference-checks check.

2 ~~(C)~~

3 (3) A criminal background check to ascertain whether the person
4 has been arrested or investigated for a crime involving the physical
5 or sexual abuse of a child.

6 ~~(D) A public records search to ascertain whether the person has~~
7 ~~been the subject of any civil claim involving the physical or sexual~~
8 ~~abuse of a child.~~

9 ~~(2) A private entity shall indemnify a public entity against claims~~
10 ~~for liability resulting from claims for child abuse or neglect based~~
11 ~~on the private entity's use of the public property and shall maintain~~
12 ~~an insurance policy in an amount no less than one million dollars~~
13 ~~(\$1,000,000) for the benefit of the public entity.~~

14 (d) A violation of the provisions of this section is a misdemeanor
15 punishable by up to six months imprisonment in a county jail or
16 by a fine of one thousand dollars (\$1,000), or by both that
17 imprisonment and fine. If a person intentionally conceals a failure
18 to report an incident pursuant this section, the failure to report is
19 a continuing offense until an agency specified in Section 11165.9
20 discovers the offense.

21 ~~(e) For purposes of this section, "close interaction with children~~
22 ~~on a regular basis" means work or volunteer activity with a child~~
23 ~~for one or more hours in a single week.~~

24 SEC. 5. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.