

AMENDED IN SENATE MAY 1, 2012
AMENDED IN SENATE APRIL 16, 2012

SENATE BILL

No. 1378

Introduced by Senator Hancock

February 24, 2012

An act to amend Section 1798.200 of the Health and Safety Code, relating to emergency medical services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1378, as amended, Hancock. Emergency medical services: personnel.

Existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, establishes the Emergency Medical Services Authority (EMSA) and provides for the certification of emergency medical technicians through the issuance of certificates, including EMT-I and EMT-II certificates, by local entities, known as local EMS agencies, which are designated by counties. Existing law also permits public safety agencies, for public safety personnel, and the State Board of Fire Services, for fire safety personnel, to issue EMT-I certificates.

Existing law requires the EMSA to establish EMT-I and EMT-II certification and disciplinary guidelines. Existing law authorizes an EMT-I or EMT-II employer or medical director of a local EMS agency to investigate and discipline those EMT-I and EMT-II employees who commit specified acts. Existing law provides that the medical director of a local EMS agency or the EMSA may deny, suspend, or revoke certificates issued under these provisions, or may place a certificate holder on probation, upon the occurrence of any of specified events. Violation of the act is a misdemeanor.

This bill would require the medical director of a local EMS agency to evaluate the good character and rehabilitation of an applicant for a certificate who has a prior criminal conviction before denying a certificate, as specified.

By imposing new duties upon local officials, this bill would create 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 1798.200 of the Health and Safety Code
2 is amended to read:
3 1798.200. (a) (1) (A) Except as provided in paragraph (2),
4 an employer of an EMT-I or EMT-II may conduct investigations,
5 as necessary, and take disciplinary action against an EMT-I or
6 EMT-II who is employed by that employer for conduct in violation
7 of subdivision (c). The employer shall notify the medical director
8 of the local EMS agency that has jurisdiction in the county in which
9 the alleged violation occurred within three days when an allegation
10 has been validated as a potential violation of subdivision (c).
11 (B) Each employer of an EMT-I or EMT-II employee shall
12 notify the medical director of the local EMS agency that has
13 jurisdiction in the county in which a violation related to subdivision
14 (c) occurred within three days after the EMT-I or EMT-II is
15 terminated or suspended for a disciplinary cause, the EMT-I or
16 EMT-II resigns following notification of an impending
17 investigation based upon evidence that would indicate the existence
18 of a disciplinary cause, or the EMT-I or EMT-II is removed from
19 EMT-related duties for a disciplinary cause after the completion
20 of the employer's investigation.
21 (C) At the conclusion of an investigation, the employer of an
22 EMT-I or EMT-II may develop and implement, in accordance with

the guidelines for disciplinary orders, temporary suspensions, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. Upon adoption of the disciplinary plan, the employer shall submit that plan to the local EMS agency within three working days. The employer's disciplinary plan may include a recommendation that the medical director of the local EMS agency consider taking action against the holder's certificate pursuant to paragraph (3).

(2) If an EMT-I or EMT-II is not employed by an ambulance service licensed by the Department of the California Highway Patrol or a public safety agency or if that ambulance service or public safety agency chooses not to conduct an investigation pursuant to paragraph (1) for conduct in violation of subdivision (c), the medical director of a local EMS agency shall conduct the investigations, and, upon a determination of disciplinary cause, take disciplinary action as necessary against the EMT-I or EMT-II. At the conclusion of these investigations, the medical director shall develop and implement, in accordance with the recommended guidelines for disciplinary orders, temporary orders, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. The medical director's disciplinary plan may include action against the holder's certificate pursuant to paragraph (3).

(3) The medical director of the local EMS agency may, upon a determination of disciplinary cause and in accordance with regulations for disciplinary processes adopted pursuant to Section 1797.184, deny, suspend, or revoke any EMT-I or EMT-II certificate issued under this division, or may place any EMT-I or EMT-II certificate holder on probation, upon the finding by that medical director of the occurrence of any of the actions listed in subdivision (c) and the occurrence of one of the following:

(A) The EMT-I or EMT-II employer, after conducting an investigation, failed to impose discipline for the conduct under investigation, or the medical director makes a determination that the discipline imposed was not according to the guidelines for disciplinary orders and conditions of probation and the conduct of the EMT-I or EMT-II certificate holder constitutes grounds for disciplinary action against the certificate.

(B) Either the employer of an EMT-I or EMT-II further determines, after an investigation conducted under paragraph (1),

1 or the medical director determines after an investigation conducted
2 under paragraph (2), that the conduct requires disciplinary action
3 against the certificate.

4 (4) The medical director of the local EMS agency, after
5 consultation with the employer of an EMT-I or EMT-II, may
6 temporarily suspend, prior to a hearing, any EMT-I or EMT-II
7 certificate or both EMT-I and EMT-II certificates upon a
8 determination that both of the following conditions have been met:

9 (A) The certificate holder has engaged in acts or omissions that
10 constitute grounds for revocation of the EMT-I or EMT-II
11 certificate.

12 (B) Permitting the certificate holder to continue to engage in
13 the certified activity without restriction would pose an imminent
14 threat to the public health or safety.

15 (5) If the medical director of the local EMS agency temporarily
16 suspends a certificate, the local EMS agency shall notify the
17 certificate holder that his or her EMT-I or EMT-II certificate is
18 suspended and shall identify the reasons therefor. Within three
19 working days of the initiation of the suspension by the local EMS
20 agency, the agency and employer shall jointly investigate the
21 allegation in order for the agency to make a determination of the
22 continuation of the temporary suspension. All investigatory
23 information not otherwise protected by law held by the agency
24 and employer shall be shared between the parties via facsimile
25 transmission or overnight mail relative to the decision to
26 temporarily suspend. The local EMS agency shall decide, within
27 15 calendar days, whether to serve the certificate holder with an
28 accusation pursuant to Chapter 5 (commencing with Section 11500)
29 of Part 1 of Division 3 of Title 2 of the Government Code. If the
30 certificate holder files a notice of defense, the hearing shall be held
31 within 30 days of the local EMS agency's receipt of the notice of
32 defense. The temporary suspension order shall be deemed vacated
33 if the local EMS agency fails to make a final determination on the
34 merits within 15 days after the administrative law judge renders
35 the proposed decision.

36 (6) The medical director of the local EMS agency shall refer,
37 for investigation and discipline, any complaint received on an
38 EMT-I or EMT-II to the relevant employer within three days of
39 receipt of the complaint, pursuant to subparagraph (A) of paragraph
40 (1) of subdivision (a).

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c). Proceedings against any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate holder or licenseholder under this division:

(1) Fraud in the procurement of any certificate or license under this division.

(2) Gross negligence.

(3) Repeated negligent acts.

(4) Incompetence.

(5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

(7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

(8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

(11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent

1 person would have reasonable cause to believe that the ability to
2 perform the duties normally expected may be impaired.

3 (12) Unprofessional conduct exhibited by any of the following:

4 (A) The mistreatment or physical abuse of any patient resulting
5 from force in excess of what a reasonable and prudent person
6 trained and acting in a similar capacity while engaged in the
7 performance of his or her duties would use if confronted with a
8 similar circumstance. Nothing in this section shall be deemed to
9 prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace
10 officer, or a peace officer who is acting in the dual capacity of
11 peace officer and EMT-I, EMT-II, or EMT-P, from using that force
12 that is reasonably necessary to effect a lawful arrest or detention.

13 (B) The failure to maintain confidentiality of patient medical
14 information, except as disclosure is otherwise permitted or required
15 by law in Part 2.6 (commencing with Section 56) of Division 1 of
16 the Civil Code.

17 (C) The commission of any sexually related offense specified
18 under Section 290 of the Penal Code.

19 (d) The information shared among EMT-I, EMT-II, and EMT-P
20 employers, medical directors of local EMS agencies, the authority,
21 and EMT-I and EMT-II certifying entities shall be deemed to be
22 an investigative communication that is exempt from public
23 disclosure as a public record pursuant to subdivision (f) of Section
24 6254 of the Government Code. A formal disciplinary action against
25 an EMT-I, EMT-II, or EMT-P shall be considered a public record
26 available to the public, unless otherwise protected from disclosure
27 pursuant to state or federal law.

28 (e) For purposes of this section, “disciplinary cause” means an
29 act that is substantially related to the qualifications, functions, and
30 duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat
31 to the public health and safety described in subdivision (c).

32 (f) In determining whether to deny an application for an EMT-I
33 or EMT-II certificate by an individual who has a prior criminal
34 conviction, the medical director of the local EMS agency shall
35 evaluate the good character and rehabilitation of the applicant. In
36 making the evaluation, the medical director may take into
37 consideration the following factors:

38 (1) The nature and seriousness of the conduct or crime under
39 consideration and its relationship to the person’s employment
40 duties and responsibilities.

1 (2) Activities since conviction, including employment or
2 participation in therapy or education, that would indicate changed
3 behavior.

4 (3) The time that has elapsed since the commission of the
5 conduct or offense that resulted in the criminal conviction and the
6 number of offenses.

7 (4) The extent to which the person has complied with any terms
8 of parole, probation, restitution, or any other sanction lawfully
9 imposed against the person.

10 (5) Any rehabilitation evidence, including character references,
11 submitted by the person.

12 (6) Employment history and current employer recommendations.

13 (7) Circumstances surrounding the commission of the offense
14 that would demonstrate the unlikelihood of repetition.

15 (8) The granting by the Governor of a full and unconditional
16 pardon, where eligible.

17 (9) Whether the applicant has secured a certificate of
18 rehabilitation from a superior court.

19 (10) Whether the information or accusation against the applicant
20 has been dismissed pursuant to Section 1203.4 or 1203.4a of the
21 Penal Code.

22 (g) In determining whether to deny an application for an EMT-I
23 or EMT-II certificate ~~pursuant to subdivision (f)~~, the medical
24 director of a local EMS agency shall only consider prior
25 convictions for which the applicant was prosecuted as an adult.

26 SEC. 2. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.