

Assembly Bill No. 1323

CHAPTER 24

An act to amend Sections 49406 and 87408.6 of the Education Code, and to amend Sections 1226.1, 121362, 121490, 121525, and 121530 of the Health and Safety Code, relating to tuberculin testing.

[Approved by Governor July 2, 2007. Filed with Secretary
of State July 2, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1323, DeSaulnier. Tuberculosis testing.

Existing law requires an intradermal tuberculin test as a part of employment in specified occupations.

This bill would authorize this test to be made by any other tuberculin test approved by the federal Food and Drug Administration (FDA).

Existing law also requires each health care provider who treats a person for active tuberculosis disease, each person in charge of a health facility, or each person in charge of a clinic providing outpatient treatment for active tuberculosis disease, to promptly report to the local health officer when there are reasonable grounds to believe that a person has active tuberculosis disease, and when a person ceases treatment for tuberculosis disease. The initial disease notification report is required to include an individual treatment plan that includes, among other information, tuberculin skin test results.

This bill would alternatively authorize the reporting of the test results of other tests for tuberculosis infection recommended by the federal Centers for Disease Control and Prevention and licensed by the FDA, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 49406 of the Education Code is amended to read:
49406. (a) Except as provided in subdivision (h), no person shall be initially employed by a school district in a certificated or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. This examination shall consist of either an approved intradermal tuberculin test or any other test for tuberculosis infection that is recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA), which, if positive, shall be followed by

an X-ray of the lungs in accordance with subdivision (f) of Section 120115 of the Health and Safety Code.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent or his or her designee may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are test negative by either the tuberculin skin test or any other test for tuberculosis infection recommended by the CDC and licensed by the FDA shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee's test remains negative. Once an employee has a documented positive test for tuberculosis infection conducted pursuant to this subdivision which has been followed by an X-ray, the foregoing examination is no longer required, and a referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent of schools a certificate from the examining physician and surgeon showing the employee was examined and found free from active tuberculosis. The county board of education may require, by rule, that all their certificates be filed in the office of the county superintendent of schools or shall require their files be maintained in the office of the county superintendent of schools if a majority of the governing boards of the districts within the county so petition the county board of education, except that in either case a district or districts with a common board having an average daily attendance of 60,000 or more may elect to maintain the files for its employees in that district. "Certificate," as used in this section, means a certificate signed by the examining physician and surgeon or a notice from a public health agency or unit of the American Lung Association which indicates freedom from active tuberculosis. The latter, regardless of form, will constitute evidence of compliance with this section. Nothing in this section shall prevent the governing board, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent physical examination than required by this section, but the rule shall provide for reimbursement on the same basis as required in this section.

(d) This examination is a condition of initial employment and the expense incident thereto shall be borne by the applicant unless otherwise provided by rules of the governing board. However, the board may, if an applicant is accepted for employment, reimburse that person in a like manner prescribed in this section for employees.

(e) The governing board of each district shall reimburse the employee for the cost, if any, of this examination. The board may provide for the examination required by this section or may establish a reasonable fee for the examination that is reimbursable to employees of the district complying with the provisions of this section.

(f) At the discretion of the governing board, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a school year whose functions do not require frequent or prolonged contact with pupils.

The governing board may, however, require an examination described in subdivision (b) and may, as a contract condition, require the examination of persons employed under contract, other than those persons specified in subdivision (a), if the board believes the presence of these persons in and around school premises would constitute a health hazard to pupils.

(g) If the governing board of a school district determines by resolution, after hearing, that the health of pupils in the district would not be jeopardized thereby, this section shall not apply to any employee of the district who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that the affiant is afflicted with active tuberculosis, he or she may be excluded from service until the governing board of the employing district is satisfied that he or she is not so afflicted.

(h) A person who transfers his or her employment from one school or school district to another shall be deemed to meet the requirements of subdivision (a) if that person can produce a certificate which shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has a certificate on file which contains that showing.

A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school to a school or school district subject to this section shall be deemed to meet the requirements of subdivision (a) if that person can produce a certificate as provided for in Section 3450 of the Health and Safety Code which shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has a certificate on file which contains that showing.

(i) Any governing board or county superintendent of schools providing for the transportation of pupils under contract authorized by Section 39800, 39801, or any other provision of law shall require as a condition of the contract the examination for active tuberculosis, as provided by subdivision (a), of all drivers transporting these pupils, provided that private contracted

drivers who transport these pupils on an infrequent basis, not to exceed once a month, shall be excluded from this requirement.

SEC. 2. Section 87408.6 of the Education Code is amended to read:

87408.6. (a) Except as provided in subdivision (h), no person shall be initially employed by a community college district in an academic or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. This examination shall consist of an approved intradermal tuberculin test or any other test for tuberculosis infection recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA), that, if positive, shall be followed by an X-ray of the lungs.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent, or his or her designee, may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are skin test negative, or negative by any other test recommended by the CDC and licensed by the FDA, shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee remains test negative by either the tuberculin skin test or any other test recommended by the CDC and licensed by the FDA. Once an employee has a documented positive skin test or any other test that has been recommended by the CDC and licensed by the FDA that has been followed by an X-ray, the foregoing examinations shall no longer be required, and referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent a certificate from the examining physician and surgeon showing the employee was examined and found free from active tuberculosis. "Certificate," as used in this subdivision, means a certificate signed by the examining physician and surgeon or a notice from a public health agency or unit of the American Lung Association that indicates freedom from active tuberculosis. The latter, regardless of form, will constitute evidence of compliance with this section.

(d) This examination is a condition of initial employment and the expense incident thereto shall be borne by the applicant unless otherwise provided by rules of the governing board. However, the board may, if an applicant is accepted for employment, reimburse the person in a like manner prescribed for employees in subdivision (e).

(e) The governing board of each district shall reimburse the employee for the cost, if any, of this examination. The board may provide for the examination required by this section or may establish a reasonable fee for the examination that is reimbursable to employees of the district complying with this section.

(f) At the discretion of the governing board, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a college year whose functions do not require frequent or prolonged contact with students.

The governing board may, however, require the examination and may, as a contract condition, require the examination of persons employed under contract, other than those persons specified in subdivision (a), if the board believes the presence of these persons in and around college premises would constitute a health hazard to students.

(g) If the governing board of a community college district determines by resolution, after hearing, that the health of students in the district would not be jeopardized thereby, this section shall not apply to any employee of the district who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that the affiant is afflicted with active tuberculosis, he or she may be excluded from service until the governing board of the employing district is satisfied that he or she is not so afflicted.

(h) A person who transfers his or her employment from one campus or community college district to another shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the college previously employing him or her that it has a certificate on file that contains that showing.

A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school to the community college district subject to this section shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate as provided for in Section 121525 of the Health and Safety Code that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has the certificate on file.

(i) Any governing board of a community college district providing for the transportation of students under contract shall require as a condition of the contract the examination for active tuberculosis, as provided in subdivision (a) of this section, of all drivers transporting the students, provided that privately contracted drivers who transport the students on an

infrequent basis, not to exceed once a month, shall be excluded from this requirement.

(j) Examinations required pursuant to subdivision (i) shall be made available without charge by the local health officer.

SEC. 3. Section 1226.1 of the Health and Safety Code is amended to read:

1226.1. (a) A primary care clinic shall comply with the following requirements regarding health examinations and other public health protections for individuals working in a primary care clinic:

(1) An employee working in a primary care clinic who has direct contact with patients shall have a health examination within six months prior to employment or within 15 days after employment. Each examination shall include a medical history and physical evaluation. A written examination report, signed by the person performing the examination, shall verify that the employee is able to perform his or her assigned duties.

(2) At the time of employment, testing for tuberculosis shall consist of a purified protein derivative intermediate strength intradermal skin test or any other test for tuberculosis infection recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA). If a positive reaction is obtained from the skin test, or any other test for tuberculosis infection recommended by the CDC and licensed by the FDA, the employee shall be referred to a physician to determine if a chest X-ray is necessary. Annual examinations shall be performed only when medically indicated.

(3) The clinic shall maintain a health record for each employee that includes reports of all employment-related health examinations. These records shall be kept for a minimum of three years following termination of employment.

(4) An employee known to have or exhibiting signs or symptoms of a communicable disease shall not be permitted to work until he or she submits a physician's certification that the employee is sufficiently free of the communicable disease to return to his or her assigned duties.

(b) Any regulation adopted before January 1, 2004, that imposes a standard on a primary care clinic that is more stringent than described in this section is void.

SEC. 4. Section 121362 of the Health and Safety Code is amended to read:

121362. Each health care provider who treats a person for active tuberculosis disease, each person in charge of a health facility, or each person in charge of a clinic providing outpatient treatment for active tuberculosis disease shall promptly report to the local health officer at the times that the health officer requires, but no less frequently than when there are reasonable grounds to believe that a person has active tuberculosis disease, and when a person ceases treatment for tuberculosis disease. Situations in which the provider may conclude that the patient has ceased treatment include times when the patient fails to keep an appointment, relocates without transferring care, or discontinues care. The initial disease notification report shall include

an individual treatment plan that includes the patient's name, address, date of birth, tuberculin skin test results or the results of any other test for tuberculosis infection recommended by the federal Centers for Disease Control and Prevention and licensed by the federal Food and Drug Administration, pertinent radiologic, microbiologic, and pathologic reports, whether final or pending, and any other information required by the local health officer. Subsequent reports shall provide updated clinical status and laboratory results, assessment of treatment adherence, name of current care provider if the patient transfers care, and any other information required by the local health officer. A facility discharge, release, or transfer report shall include all pertinent and updated information required by the local health officer not previously reported on any initial or subsequent report, and shall specifically include a verified patient address, the name of the medical provider who has specifically agreed to provide medical care, clinical information used to assess the current infectious state, and any other information required by the local health officer. Each health care provider who treats a person with active tuberculosis disease, and each person in charge of a health facility or a clinic providing outpatient treatment for active tuberculosis disease, shall maintain written documentation of each patient's adherence to his or her individual treatment plan. Nothing in this section shall authorize the disclosure of test results for human immunodeficiency virus (HIV) unless authorized by Chapter 7 (commencing with Section 120975) of, Chapter 8 (commencing with Section 121025) of, and Chapter 10 (commencing with Section 121075) of Part 4 of Division 105.

In the case of a parolee under the jurisdiction of the Department of Corrections and Rehabilitation, the local health officer shall notify the assigned parole agent, when known, or the regional parole administrator, when there are reasonable grounds to believe that the parolee has active tuberculosis disease and when the parolee ceases treatment for tuberculosis. Situations where the local health officer may conclude that the parolee has ceased treatment include times when the parolee fails to keep an appointment, relocates without transferring care, or discontinues care.

SEC. 5. Section 121490 of the Health and Safety Code is amended to read:

121490. The examination shall consist of either an approved intradermal tuberculin skin test or any other test for tuberculosis infection that has been recommended by the federal Centers for Disease Control and Prevention and licensed by the federal Food and Drug Administration, that, if positive, is followed by an X-ray of the lungs.

SEC. 6. Section 121525 of the Health and Safety Code is amended to read:

121525. (a) Except as provided in Section 121555, no person shall be initially employed by a private or parochial elementary or secondary school, or any nursery school, unless that person produces or has on file with the school a certificate showing that within the last 60 days the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative, or negative by any other test for tuberculosis recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA), shall be required to undergo the foregoing examination at least once each four years, or more often if directed by the school upon recommendation of the local health officer, for so long as the employee remains test negative by any test for tuberculosis infection that has been recommended by the CDC and licensed by the FDA. Once an employee has a documented positive tuberculin test or any other test for tuberculosis infection that has been recommended by the CDC and licensed by the FDA, the foregoing examination is no longer required, and a referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) At the discretion of the governing authority of a private school, this section shall not apply to employees who are employed for any period of time less than a school year whose functions do not require frequent or prolonged contact with pupils. The governing authority may, however, require the examination and may as a contract condition require the examination of persons employed under contract if the governing authority believes the presence of the persons in and around the school premises would constitute a health hazard to students.

(d) The governing authority of a private school providing for the transportation of pupils under authorized contract shall require as a condition of the contract that every person transporting pupils produce a certificate showing that within the last 60 days the person has been examined and has been found to be free of communicable tuberculosis, except that any private contracted driver who transports pupils on an infrequent basis, not to exceed once a month, shall be excluded from this requirement.

(e) The examination attested to in the certificate required pursuant to subdivision (d) of this section shall be made available without charge by the local health officer.

“Certificate,” as used in this chapter, means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the Tuberculosis Association that indicates freedom from active tuberculosis.

(f) Nothing in this section shall prevent the governing authority of a private, parochial, or nursery school, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by this section.

SEC. 7. Section 121530 of the Health and Safety Code is amended to read:

121530. The examination shall consist of either an approved intradermal tuberculosis test or any other test for tuberculosis infection that has been

recommended by the CDC and licensed by the FDA, that, if positive, shall be followed by an X-ray of the lungs.

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