

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 357 (Portantino)
Version: April 17, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
CK

SUBJECT

Vehicles: physician and surgeon reporting

DIGEST

This bill removes mandatory reporting by doctors to the Department of Motor Vehicles (DMV) of disorders characterized by lapses of consciousness. The bill instead provides authority to report conditions that may impair driving and provides broader immunity to health care professionals for reporting or not reporting such conditions.

EXECUTIVE SUMMARY

Currently, the law requires physicians and surgeons to report immediately to a local health officer when a patient has been diagnosed with a disorder characterized by lapses of consciousness. There is also discretionary authority granted to these health care professionals to also report a patient condition where the physician reasonably believes in good faith that reporting the patient's condition will serve the interest of the public. The local health officer is then required to report that information to the DMV, including names, ages, and addresses.

The DMV may use this information to refuse to issue or renew a driver's license to such persons. The law immunizes a physician and surgeon from civil and criminal liability to a patient for making a report that is required or authorized by the statute.

This bill is sponsored by the Epilepsy Foundation Los Angeles, who argue that this required reporting of only a subset of disorders that could affect driving is discriminatory. This bill makes reporting of any condition discretionary where it could affect the safe operation of a motor vehicle and a physician or surgeon reasonably and in good faith believes that reporting the patient will serve the public interest. The bill expands the immunity provision to cover more persons and entities and more conduct. The bill is supported by various healthcare-related organizations. There is no known opposition. The bill passed out of the Senate Health Committee on a vote of 15 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires every physician and surgeon to report immediately to the local health officer in writing, the name, date of birth, and address of every patient at least 14 years of age or older whom the physician and surgeon has diagnosed as having a case of a disorder characterized by lapses of consciousness. (Health & Saf. Code § 103900(a).)
- 2) Authorizes a physician and surgeon, if they reasonably and in good faith believe that the reporting of a patient will serve the public interest, to report a patient's condition even if it may not be required under the department's definition of disorders characterized by lapses of consciousness. (Health & Saf. Code § 103900(a).)
- 3) Requires the local health officer to report in writing to the DMV the name, age, and address, of every person reported to it as a case of a disorder characterized by lapses of consciousness. These reports shall be for the information of the Department of Motor Vehicles in enforcing the Vehicle Code, and shall be kept confidential and used solely for the purpose of determining the eligibility of any person to operate a motor vehicle on the highways of this state. (Health & Saf. Code § 103900(b), (c).)
- 4) Defines those "disorders characterized by lapses of consciousness" as those medical conditions that involve:
 - a) a loss of consciousness or a marked reduction of alertness or responsiveness to external stimuli;
 - b) the inability to perform one or more activities of daily living; and
 - c) the impairment of the sensory motor functions used to operate a motor vehicle. (17 C.C.R. § 2806.)
- 5) Provides examples of medical conditions that do not always, but may progress to the level of functional severity described, including Alzheimer's disease and related disorders, seizure disorders, brain tumors, narcolepsy, sleep apnea, and abnormal metabolic states, including hypo- and hyperglycemia associated with diabetes. (17 C.C.R. § 2806.)
- 6) Provides that a physician or surgeon who reports a patient diagnosed as a case of a disorder characterized by lapses of consciousness pursuant to the above law shall not be civilly or criminally liable to any patient for making any report required or authorized by that law. (Health & Saf. Code § 103900(f).)

- 7) The department may refuse to issue to, or renew a driver's license of, any person who:
 - a) is rendered incapable of safely operating a motor vehicle because of alcoholism, excessive and chronic use of alcoholic beverages, or addiction to, or habitual use of, any drug;
 - b) is addicted to the use of narcotic drugs, except as provided;
 - c) has a disorder characterized by lapses of consciousness or who has experienced, within the last three years, either a lapse of consciousness or an episode of marked confusion caused by any condition which may bring about recurrent lapses, or who has any physical or mental disability, disease, or disorder which could affect the safe operation of a motor vehicle unless the department has medical information which indicates the person may safely operate a motor vehicle. In making its determination, the DMV may rely on any relevant information available to it. (Veh. Code § 12806.)

This bill:

- 1) Repeals the existing statute regarding reporting to the DMV through local health officers.
- 2) Authorizes a physician or surgeon to report immediately to the DMV, in writing, the name, date of birth, and address of every patient whom the physician or surgeon has diagnosed as having any physical or mental disability, disease, or disorder that could affect the safe operation of a motor vehicle, if a physician and surgeon reasonably and in good faith believes that reporting the patient will serve the public interest.
- 3) Requires a physician or surgeon who so reports a patient to contemporaneously complete and transmit to the DMV the form prepared for this purpose.
- 4) Provides that these reports shall be for use by the DMV only, and shall be kept confidential and used solely for the purpose of determining the eligibility of any person to operate a motor vehicle on the highways of this state, or for the purpose of a bona fide research project, if the data is solely provided by the DMV in anonymous form.
- 5) Requires the DMV, in cooperation with the State Department of Public Health, to consult with professional medical organizations whose members have specific expertise in the diagnosis and treatment of those physical or mental disabilities, diseases, or disorders that could affect the safe operation of a motor vehicle as well as definitions of functional severity to guide reporting so that diagnosed cases reported pursuant to this section are only those where there is reason to

believe that the patients' conditions are likely to impair their ability to operate a motor vehicle.

- 6) Immunizes a health care provider or health care entity from civil, criminal, administrative, licensing, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for making or not making, or in relation to or arising from making or not making, a report pursuant hereto.
- 7) Makes other conforming changes.
- 8) Requires the DMV, by January 1, 2027, to submit to the Legislature a report evaluating the impact of transitioning to a discretionary reporting system for medical conditions. This report shall include a comparison of the number of reports submitted by physicians and surgeons to the department and the types of conditions reported before and after this transition. The report shall also include an analysis of the crash rates of individuals reported under the discretionary reporting system. A report submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.
- 9) Sunsets the changes to the reporting law as of January 1, 2029 and reverts back to the law as it exists today.

COMMENTS

1. History of reporting certain disorders

Since 1957, California doctors have been required to report to the local health officer patients diagnosed with disorders characterized by lapses of consciousness. A few examples of conditions that may, but do not necessarily, constitute a "disorder characterized by lapses of consciousness" are Alzheimer's disease, seizure disorders, narcolepsy, and abnormal metabolic states, including hypo- and hyperglycemia associated with diabetes.

Since 1990, doctors have been authorized to report patients whose condition is not categorically required to be reported if the reporting doctor has a reasonable and good faith belief it is in the public interest to report the patient. Since 2001, drivers who are reported by doctors must be reexamined by a behind-the-wheel driving test. Doctors are not civilly or criminally liable to their patients for filing a mandatory or voluntary report that is authorized by this statute.

The DMV can then use this information to determine whether to issue or renew a driver's license.

2. Preventing discrimination

The Epilepsy Foundation Los Angeles, the sponsor of this bill, assert that this law improperly discriminates against drivers with epilepsy:

California is one of only six states that has yet to modernize their laws affecting drivers with epilepsy. These outdated laws discriminate against drivers with epilepsy by mandating clinicians report these drivers to the DMV, with little regard for seizure frequency, control, or severity. According to research, in states with mandated clinician reporting, patients may be apprehensive to seek care for fear of losing their licenses, which can lead to withholding important information from their clinician. In California, according to a 2003 study by the American Academy of Neurology, 16 percent of patients who never had their licenses suspended and 50 percent of patients who previously had their licenses suspended withheld information from their clinician. According to the findings of another study, patients with epilepsy “were six times more likely to compromise their own medical care in favor of driving illegally (49% vs 8%) serving neither the public’s nor the patient’s safety interests.”

There have been several attempts at rectifying this issue. AB 2547 (Lowenthal, 2004) proposed to revise the doctors’ reporting requirements to allow them to treat their patients with reportable conditions or disorders for a “clinically reasonable amount of time” before they are required to report, except that patients with Alzheimer’s disease or other dementia disorders would be reported immediately. That bill was held in this Committee due to concerns about the potential increased risk to public safety.

SB 212 (Lowenthal, 2005) proposed to change from mandatory to voluntary a physician’s duty to report when the physician has diagnosed a patient as having a case of a disorder characterized by lapses of consciousness. It would have allowed a physician 30 days to treat a condition without having to report the patient under several conditions, including that the patient’s condition would not pose a risk to public safety while operating a vehicle during the 30-day period of treatment. SB 212 was vetoed by Governor Schwarzenegger. The veto message states:

This bill would eliminate, with few exceptions, the mandatory requirement that California physicians report to the Department of Motor Vehicles (DMV) every patient whom they diagnose with a condition characterized by lapses of consciousness.

While these reporting requirements, which have been in place since 1939, may need to be streamlined, it is too great a risk to other motorists to simply eliminate reporting requirements altogether. One of DMV’s primary mandates is to ensure that all drivers are competent to safely

operate a motor vehicle. The DMV needs physician reports in order to fulfill that mandate.

SB 1394 (Lowenthal, 2008) would have sunset the existing provisions and narrowed the bases for mandatory reporting, leaving discretion in the hands of health care providers. SB 1394 was again vetoed by Governor Schwarzenegger. In his veto message, he reiterated his concern:

This bill would, with few exceptions, eliminate the mandatory requirement that California physicians report to the Department of Motor Vehicles (DMV) every patient whom they diagnose with a condition characterized by lapses of consciousness.

Eliminating mandatory physician reporting would endanger the motoring public. The patient who suffers from a seizure disorder or other severe impairment and continues to operate an automobile is a hazard to himself or herself, as well as to those with whom he or she shares the road.

In vetoing nearly identical legislation in 2005, I noted that it is too great a risk to other motorists to simply eliminate reporting requirements. One of DMV's primary mandates is to ensure that all drivers are competent to safely operate a motor vehicle. The DMV needs physician reports in order to fulfill that mandate.

3. Fourth time's the charm?

This bill again removes mandated reporting of specific disorders. Instead, the bill simply authorizes reporting of persons whom the physician or surgeon has diagnosed as having any physical or mental disability, disease, or disorder that could affect the safe operation of a motor vehicle, if the physician or surgeon reasonably and in good faith believes that reporting the patient will serve the public interest.

According to the author:

By refining the circumstances under which physicians are required to report patients who experience a lapse of consciousness, SB 357 provides a balance between public safety and physician-patient confidentiality. Existing mandatory reporting of patients who experience lapses of consciousness can adversely affect the long-held confidential nature of the physician-patient relationship. Further, the potential disclosure of sensitive information can cause patients to be less forthcoming to physicians, which may result in inaccurate or inadequate diagnosis and treatment of the condition. Also, there are many individuals who suffer

only a single episode of a lapse of consciousness or who have a condition that is easily controlled who do not pose a threat to public safety.

The bill also amends the immunity provision. It provides:

A health care provider or health care entity is not subject to civil, criminal, administrative, licensing, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for making or not making, or in relation to or arising from making or not making, a report pursuant to this section.

This immunity provision is distinct from the existing provision in several ways. First, it applies to any health care provider or entity. Second, it applies to affirmative reports as well as not making such reports. Third, it expands the bases of liability to include any other penalty or form of liability. Finally, and most importantly, it does not qualify the immunity at all. Therefore, as written, the language could cover gross negligence in failing to report a clear issue or even intentionally misreporting someone's disorder.

The existing statute immunizes mandated reports but also reports "authorized" by the law. The terms of the statute authorize reports where the doctor "reasonably and in good faith believes that the reporting of a patient will serve the public interest." Therefore, it incorporates this standard into the immunity. The bill still authorizes reporting "if a physician and surgeon reasonably and in good faith believes that reporting the patient will serve the public interest." However, the bill does not limit the legal shield to reports authorized by it, but to any reports or no reporting at all.

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Although immunity provisions are rarely preferable, the Legislature has in limited scenarios approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Immunities are generally afforded when needed to ensure the willingness of individuals to continue taking on certain roles that may involve some risk and to incentivize certain conduct, such as the provision of life-saving or other critical services. Examples include protections for use of CPR (Civ. Code § 1714.2); use of an automated external defibrillator (Civ. Code § 1714.21); use of opiate overdose treatment (Civ. Code § 1714.22); providing emergency care at the scene of an emergency (Health & Saf. Code §§ 1799.102, 1799.106); and performing emergency rescue services (Health & Saf. Code § 1799.107). However, as indicated above, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

In response to concerns about the breadth of the immunity provision, the author has agreed to cover only reporting that is “authorized” by the statute, thereby maintaining the existing standard.

Amendment

Amend (e) as follows:

A health care provider or health care entity is not subject to civil, criminal, administrative, licensing, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for making or not making, or in relation to or arising from making or not making, a report **authorized** pursuant to this section.

Writing in support, the California Medical Association argues:

An outdated state law from 1957 discriminates against drivers with epilepsy and other conditions by requiring physicians to automatically report these drivers to the DMV. Research has shown that these requirements can result in patients withholding crucial information from their physicians and not seeking the care they need, out of fear of losing their licenses. When a person with epilepsy withholds such critical information from their doctor they jeopardize their own health, risking an increase in seizure activity or even a loss of seizure control.

By refining the circumstances under which physicians are required to report patients, SB 357 seeks to maintain appropriate public safety standards without jeopardizing patient health for individuals with epilepsy and other conditions.

Amendments agreed to in the previous committee place a reporting requirement on the DMV to evaluate the impact of these changes to the law. The changes sunset January 1, 2029 and essentially revert back to the law as it exists today.

SUPPORT

Epilepsy Foundation Los Angeles (sponsor)
American Academy of Neurology
American Epilepsy Society
California Academy of Family Physicians
California Chapter of the American College of Emergency Physicians
California Medical Association
California Neurology Society
California Teamsters Public Affairs Council
Epilepsy Foundation of America

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1394 (Lowenthal, 2008) *See* Comment 2.

SB 212 (Lowenthal, 2005) *See* Comment 2.

AB 2547 (Lowenthal, 2004) *See* Comment 2.

PRIOR VOTES:

Senate Transportation Committee (Ayes 15, Noes 0)
