

AMENDED IN SENATE AUGUST 26, 2013

AMENDED IN SENATE JULY 8, 2013

AMENDED IN SENATE JUNE 20, 2013

AMENDED IN SENATE JUNE 10, 2013

AMENDED IN ASSEMBLY MAY 13, 2013

AMENDED IN ASSEMBLY APRIL 17, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 633

Introduced by Assembly Member Salas

(Principal coauthor: Assembly Member Logue)

***(Coauthors: Assembly Members Bocanegra, Ian Calderon, Hall,
Jones-Sawyer, Nazarian, Quirk-Silva, Wieckowski, and Yamada)***

(Coauthor: Senator Pavley)

February 20, 2013

An act to add Section 1799.103 to the Health and Safety Code, relating to emergency medical services.

LEGISLATIVE COUNSEL'S DIGEST

AB 633, as amended, Salas. Emergency medical services: civil liability.

Under existing law, a person who, in good faith and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency is not liable for civil damages resulting from any act or omission, except as specified. Existing law

further provides that a person who has completed a basic cardiopulmonary resuscitation course that complies with specified standards, and who in good faith renders emergency cardiopulmonary resuscitation at the scene of an emergency is not liable for any civil damages as a result of any act or omission, except as specified. Existing law provides that a health care provider, including any licensed clinic, health dispensary, or health facility, is not liable for professional negligence or malpractice for any occurrence or result solely on the basis that the occurrence or result was caused by the natural course of a disease or condition, or was the natural or expected result of reasonable treatment rendered for the disease or condition.

This bill would prohibit an employer from having a policy of prohibiting an employee from providing voluntary emergency medical services, including, but not limited to, cardiopulmonary resuscitation, in response to a medical emergency, except as specified. *The bill would state that these provisions do not impose any express or implied duty on an employer to train its employees regarding emergency medical services or cardiopulmonary resuscitation.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 1799.103 is added to the Health and
- 2 Safety Code, to read:
- 3 1799.103. (a) An employer shall not adopt or enforce a policy
- 4 prohibiting an employee from voluntarily providing emergency
- 5 medical services, including, but not limited to, cardiopulmonary
- 6 resuscitation, in response to a medical emergency, except as
- 7 provided in subdivisions (b) and (c).
- 8 (b) Notwithstanding subdivision (a), an employer may adopt
- 9 and enforce a policy authorizing employees trained in emergency
- 10 services to provide those services. However, in the event of an
- 11 emergency, any available employee may voluntarily provide
- 12 emergency medical services if a trained and authorized employee
- 13 is not immediately available or is otherwise unable or unwilling
- 14 to provide emergency medical services.
- 15 (c) Notwithstanding subdivision (a), an employer may adopt
- 16 and enforce a policy prohibiting an employee from performing
- 17 emergency medical services, including, but not limited to,

1 cardiopulmonary resuscitation, on a person who has expressed the
2 desire to forgo resuscitation or other medical interventions through
3 any legally recognized means, including, but not limited to, a
4 do-not-resuscitate order, a Physician Orders for Life Sustaining
5 Treatment form, an advance health care directive, or a legally
6 recognized health care decisionmaker.

7 *(d) This section does not impose any express or implied duty*
8 *on an employer to train its employees regarding emergency*
9 *medical services or cardiopulmonary resuscitation.*

BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
Senator Noreen Evans, Chair 2013-2014 Regular Session

AB 633 (Salas) As Amended June 20, 2013

Hearing Date: July 2, 2013

Fiscal: No

Urgency: No NR

SUBJECT

Emergency medical services: civil liability

DESCRIPTION

This bill would prohibit an employer from adopting or enforcing a policy prohibiting an employee from voluntarily providing emergency medical services (EMS), including CPR, except when a person has a do-not-resuscitate order, as specified. This bill would also allow an employer to adopt a policy authorizing trained employees to provide EMS, and prohibiting non-trained employees from providing EMS if the trained employee was immediately available during an emergency.

This bill would extend immunity to an employee who renders emergency care voluntarily despite providing those services during the performance of activities for which he or she is compensated, and exempt employers from liability if an employee voluntarily provides emergency care.

BACKGROUND

Under traditional principles of common law, a person has no duty to come to the aid of another. However, if a person does assist another, then he or she has a duty to exercise reasonable care. If the actions of the "good Samaritan" fall below this standard of care and he or she causes harm, the good Samaritan may be held liable. That common law rule is generally codified in Health & Safety Code Section 1799.102 which provides that no person who, in good faith and not for compensation, renders emergency care at the scene of an emergency is liable for civil damages resulting from any act or omission.

This bill seeks to respond to an incident in Bakersfield earlier this year, in which an 87-year-old woman died following cardiac arrest. A seven-minute 911 call revealed that a staff member of the independent living center where the woman was a resident declined requests from the 911 operator to perform CPR, or to find someone else to perform CPR. Initially, the owner of the independent living center said that the staff member was following company policy by waiting for first responders rather than administering medical care herself. However, the company later released a statement asserting that "the

incident resulted from a complete misunderstanding of our practice with regard to emergency medical care for our residents."

Accordingly, this bill seeks to ensure that employers will not adopt or enforce a policy that prohibits employees from voluntarily providing emergency medical services in response to a medical emergency.

CHANGES TO EXISTING LAW

Existing law provides that a person has no duty to come to the aid of another, but if he or she decides to assist another then he or she must act with reasonable care. (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604; *Williams v. State of California* (1983) 34 Cal.3d 18.)

Existing law provides that no person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. Existing law also provides that the scene of an emergency shall not include emergency departments and other places where medical care is usually offered. (*Health & Saf. Code Sec. 1799.102.*)

Existing law defines "willful or wanton misconduct" as "conduct by a person who may have no intent to cause harm, but who intentionally performs an act so unreasonable and dangerous that he or she knows or should know it is highly probable that harm will result." (*Donnelly v. Southern Pacific Co.* (1941) 18 Cal.2d 863; *City of Santa Barbara v. Superior Court*, *supra*, 41 Cal.4th 747.)

Existing law defines "gross negligence" as an "exercise of so slight a degree of care as to justify the belief there was indifference to the interest and welfare of others." (46 Cal. Jur. 3d Negligence 100.)

This bill would prohibit an employer from adopting or enforcing a policy prohibiting an employee from voluntarily providing emergency medical services(EMS), including, but not limited to, cardiopulmonary resuscitation, in response to a medical emergency.

This bill would authorize an employer to adopt and enforce a policy authorizing employees trained in EMS to provide those services first during a medical emergency, and prohibit other employees from providing those services, unless the trained employee is not immediately available or otherwise unwilling to perform EMS.

This bill would authorize an employer to adopt and enforce a policy prohibiting an employee from performing EMS on a person who has expressed the desire to forego resuscitation or other medical interventions through any legally recognized means, including, but not limited to, a do-not-resuscitate order, a Physical Orders for Life Sustaining Treatment form, an advanced health care directive, or a legally recognized healthcare decision-maker.

This bill would provide that provisions of existing law providing immunity from liability to persons who, in good faith and not for compensation, render EMS at the scene of an emergency, apply to employees who voluntarily provide EMS despite providing those services during the performance of activities for which he or she is compensated.

This bill would exempt an employer from liability for any civil damages or criminal or administrative discipline resulting from an act or omission of an employee who voluntarily provides EMS.

This bill would exempt an employer from liability for any civil damages or criminal or administrative discipline or penalties resulting from an employee's violation of an employer's policy adopted pursuant to this bill that authorize trained employees to provide EMS and prohibit other employees from providing those services if a trained employee is available.

COMMENT

1. Stated need for the bill

According to the author:

This measure seeks to ensure that employers not adopt or enforce any policies that prohibit an employee from voluntarily providing emergency medical services in response to medical emergency. Currently, it is unclear whether such policies exist; however, employees might not provide emergency services out of fear that such policies might exist, which can lead to discipline or termination.

AB 633 protects employees who choose to save a life without fear of losing their job. This legislation closes a loophole and provides clarity in the law to protect individuals who choose to help someone in emergency situations.

2. Protection for good Samaritans

Existing law provides that no person who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct. Good Samaritan laws exist to encourage people to aid others in need by granting statutory immunity from civil damages and removing the fear of liability. These statutes seek to inspire people, who owe no duty to aid their fellow citizens, to do so anyway.

The author asserts that CPR improves the chance of survival following cardiac arrest. According to the American Heart Association, there are approximately 360,000 out-of-hospital cardiac arrests in the United States each year, accounting for 15 percent of all deaths. On average, bystander CPR is provided in only approximately one in four of all out-

of-hospital events in the United States despite public education campaigns and promotion of CPR as a best practice.

This bill seeks to encourage bystander aid and assistance in medical emergencies occurring in the workplace by prohibiting employers from adopting a policy prohibiting employees from acting as good Samaritans. Other provisions of existing law similarly provide for qualified immunity protections. For example, architects and engineering volunteers who voluntarily and without compensation provide structural inspection services at the scene of an emergency at the request of a public official are not liable for any injury caused by their good faith inspection of a structure, as specified. (Bus. & Prof. Code Secs. 5536.27, 6706.) Similarly, nurses, vocational nurses, and physician assistants who in good faith render emergency care at the scene of an emergency which occurs outside the place and course of their employment are not liable for civil damages as the result of acts or omissions in rendering that care. No immunity exists, however, if they act with gross negligence. (Bus. & Prof. Code Secs. 2727.5, 2861.5, 3503.5.)

This bill would ensure that good Samaritans are free to volunteer EMS even while at work. In support of this bill, the California Rescue Paramedic Association writes, "a well-meaning and trained bystander is an essential component of the chain of survival in critical situations such as sudden cardiac arrest, severe allergic reactions, and uncontrolled bleeding from a significant wound. While professional responders are well trained and experienced in handling these crises, it takes time for them to respond to the scene. Every second counts in cases of cardiac arrest. We depend upon bystanders to implement the basics of emergency care to buy time for professional rescuers to arrive."

3. Do not resuscitate orders

This bill would authorize an employer to adopt and enforce a policy prohibiting an employee from performing EMS, including CPR, on a person who has expressed the desire to forego resuscitation or other medical interventions through any legally recognized means, including specified legal forms. Under existing law, there are three types of instruments generally used by patients to communicate the desire to forego resuscitation: the Emergency Medical Services Authority (EMSA)/California Medical Association Pre-hospital Do Not Resuscitate (DNR) Form; the Physician Orders for Life Sustaining Treatment Form; and a standard DNR medallion or bracelet attached to the patient. In addition to those three instruments, local EMS agencies may also approve other documents, including but not limited to a physician's order in a patient's chart or Advanced Health Care Directives.

According to the California EMSA, patients have broad authority to refuse resuscitation. All local emergency medical services agencies are required to have a policy that recognizes and accommodates a patient's wish to limit treatment, which applies to patients in long-term care facilities, during transport between facilities, and in patient's homes. Accordingly, allowing employers to have a policy prohibiting employees from providing EMS to patients who have indicated a desire to forego such services is consistent with existing California public policy. In addition, staff notes that as drafted, this provision

arguably encompasses any type of instrument an individual could use to communicate that desire, and is therefore appropriately broad in scope.

4. Liability for employers

This bill would create a variety of immunities: (1) an immunity for employees who provide EMS, as specified; (2) an immunity for an employer resulting from an act or omission of an employee who voluntarily provides EMS; and (3) immunity for an employer resulting from an employee's violation of an employer's policy requiring a trained employee to be a first responder in an emergency situation.

The above immunities were added to the bill in the Senate, after the bill left the Assembly. Since their inclusion, the Consumer Attorneys of California(CAOC) have expressed concerns that:

CAOC had worked with the author's office on amendments in the Assembly and was neutral on the version that passed the Assembly. The earlier version struck the correct balance- unfortunately; we do oppose the new provisions as the immunity is overbroad and respectfully request that the amendments negotiated in good faith in the Assembly be amended back into AB 633.

In addition, other stakeholders have expressed concern that a new addition to the bill, which would allow an employer to adopt a policy prohibiting employees not specifically trained in EMS from providing those services if a trained employee is immediately available, is potentially confusing. Accordingly, the following amendments would eliminate the immunity provisions and clarify what policies an employer may adopt. The author and stakeholders have agreed to continue working on the issue of employer liability as this bill moves through the legislative process.

Author's amendments:

1. On page 2, line 10, strike: "and prohibiting other employees"
2. On page 2, strike lines 11-13 inclusive
3. On page 2, line 14, strike: "emergency"
4. On page 3, strike lines 12-25 inclusive.

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Support : American College of Emergency Physicians; California Advocates for Nursing Home Reform; California Assisted Living Association; California Fire Chiefs Association; California Medical Association; California Professional Firefighters; California Rescue Paramedic Association; Civil Justice Association of California; Clinica Sierra Vista; Hall Ambulance Service Incorporated

Opposition : Consumer Attorneys of California

HISTORY

Source : Author

Related Pending Legislation : AB 259 (Logue) would make it a misdemeanor for a long-term health care facility, as specified, to have a policy that prohibits any employee from administering cardiopulmonary resuscitation (CPR) with an exception for individuals with a "do-not-resuscitate" form. This bill is currently in the Senate Health Committee.

Prior Legislation :

AB 83 (Feuer, Chapter 77, Statutes of 2009) extended the good Samaritan immunity to those persons who offered nonmedical care or assistance at the scene of an emergency.

AB 90 (Adams, 2009) would have revised Health and Safety Code Section 1799.102 to provide for immunity from liability for any person who, in good faith and without compensation, renders emergency medical or nonmedical care at the scene of an emergency. This bill died in the Assembly Judiciary Committee.

SB 39 (Benoit, 2009) would have revised existing immunity protections for disaster service workers who perform disaster services during a state of emergency. This bill died on the Senate Inactive File.

Prior Vote :

Senate Committee on Health (Ayes 8, Noes 0) Assembly Floor (Ayes 67, Noes 1) Assembly Judiciary Committee (Ayes 10, Noes 0) Assembly Labor and Employment Committee (Ayes 7, Noes 0)

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