

EXHIBIT 3

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2015 - 2016 Regular Session

SB 277 (Pan and Allen)
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Hearing Date: April 28, 2015
Fiscal: Yes
Urgency: No
RD

SUBJECT

Public health: vaccinations

DESCRIPTION

This bill would eliminate the personal belief exemption from the requirement that children receive specified vaccines for certain infectious diseases (including diphtheria, hepatitis B, haemophilus influenzae type b, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, and chicken pox) prior to being admitted to any public or private elementary or secondary school, child care center, day nursery, nursery schools, family day care home, or developmental centers, and would make other conforming changes. This bill would specify that this mandatory vaccination requirement (for which the bill would only leave a medical exemption) does not apply to a home-based private school or a student enrolled in an independent study program.

This bill would, in certain circumstances, permit a child to be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting a communicable disease for which immunization is otherwise required by law.

This bill would add to existing notifications that school districts must give to parents, the immunization rates for the school in which a pupil is enrolled for each of the immunizations required.

BACKGROUND

According to the Center for Disease Control and Prevention (CDC), it is always better to prevent a disease than to treat it after it occurs. Immunity is the body's way of preventing disease. The immune system recognizes germs that enter the body as "foreign invaders" (called antigens) and produces proteins called antibodies to fight them. Vaccines contain the same antigens, or parts thereof, that cause diseases, but the antigens in vaccines are either killed or greatly weakened. As such, vaccine antigens are not strong enough to cause disease but they are strong enough to make the immune system produce antibodies against them. Memory cells prevent re-infection when they

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encounter that disease again in the future. According to the CDC, "a vaccine is a safer substitute for a child's first exposure to a disease." (CDC, *Why are Childhood Diseases so Important?* <<http://www.cdc.gov/vaccines/vac-gen/howvpd.htm>> [as of Apr. 19, 2015].) Vaccines are responsible for the control of many infectious diseases that were once common around the world, including polio, measles, diphtheria, pertussis (whooping cough), rubella (German measles), mumps, tetanus, and Hib. In fact, vaccine eradicated smallpox, one of the most devastating diseases in history. Over the years, vaccines have prevented countless cases of infectious diseases and saved literally millions of lives. (*Id.*) According to the California Department of Public Health (CDPH), implementation of statewide immunization requirements has been effective in maintaining a 92 percent immunization rate among children in child care facilities and kindergartens. (CDPH, *2011-2012 Child Care and School Fact Sheet* (Jul. 2012) <<http://www.cdph.ca.gov/programs/immunize/Documents/ChildCareAndSchoolFactSheet2011-2012.pdf>> [as of Apr. 19, 2015].)

Recently, California witnessed an outbreak of measles, a vaccine-preventable disease. According to CDPH, "[i]n December 2014, a large outbreak of measles started in California when at least 40 people who visited or worked at Disneyland theme park in Orange County contracted measles; the outbreak also spread to at least half a dozen other states. On April 17, 2015, the outbreak was declared over, since at least two 21-day incubation periods (42 days) have elapsed from the end of the infectious period of the last known outbreak-related measles case." (CDPH, *Measles* <<http://www.cdph.ca.gov/HealthInfo/discond/Pages/Measles.aspx>> [as of Apr. 19, 2015].)

Under California law, before being admitted to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or developmental center, a child must be vaccinated for 10 separate diseases (diphtheria, hepatitis B, haemophilus influenzae type b, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, and chicken pox), as well as any other disease deemed appropriate by the California Department of Public Health, as specified. (Health & Saf. Code Sec. 120335(b).) California law also, however, currently recognizes exemptions from the mandatory immunization law for both medical reasons and because of personal beliefs (personal belief exemptions or PBEs). (*See* Health & Saf. Code Sec. 120325(c).) In order to exercise a medical reason exemption, the parent or guardian must obtain a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, and indicating the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization. Once the physician statement is filed with the governing authority, that person (i.e. child) shall be exempt from specified requirements to the extent indicated by the physician's statement. (*See* Health & Saf. Code Sec. 120370.)

In 2012, in response to concerns of increased PBEs, the Legislature passed AB 2109 (Pan, Ch. 821, Stats. 2012) to modify the process for obtaining exemptions to one or more

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immunizations required for child care or school based on personal beliefs. Under that law, PBEs now require documentation that health care practitioners have informed the parents about vaccines and diseases. Notably, that form requires that the parent check one of two boxes: (1) that he or she has received information from an authorized health care practitioner regarding the benefits and risks of immunizations, as well as the health risks to the student and to the community of the communicable diseases for which immunization is required in California; or (2) that he or she is a member of a religion which prohibits seeking medical advice or treatment from authorized health care practitioners.

This bill would now remove the personal belief exemption, thus, requiring all children entering into private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or developmental center to be vaccinated as a condition of entry into those institutions, unless a medical reason exemption applies. This bill would also exempt from mandatory immunization a home-based private school or student enrolled in independent study, as specified.

This bill was triple-referred, with the Senate Health Committee and Senate Education Committee hearing the bill prior to this Committee. Those committees passed out the bill on a vote of 6-2 and 7-2, respectively.

CHANGES TO EXISTING LAW

1. Existing law, the Education Code, requires that certain notifications be made by school districts to parents. (Educ. Code Sec. 48980.)

This bill would require such notification to include immunization rates for the school in which a pupil is enrolled for each of the immunizations mandated by law.

2. Existing law provides that each person between the ages of 6 and 18 years not exempted, as specified, is subject to compulsory full-time education. Existing law provides that each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted, as specified, must attend the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located. Existing law requires that each parent, guardian, or other person having control or charge of the pupil send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located. (Educ. Code Sec. 48200.)

Existing law authorizes the governing board of a school district or a county office of education to offer independent study to meet the educational needs of pupils in accordance with specified requirements. (Educ. Code Sec. 51745 et seq.) Existing

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law provides that the independent study by each pupil shall be coordinated, evaluated, and, notwithstanding specified law, shall be under the general supervision of an employee of the school district, charter school, or county office of education who possesses a valid certification document or an emergency credential as required by law. (Educ. Code Sec. 51745.7(a).)

Existing law prohibits the unconditional admission of a student to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless, prior to the child's first admission to that institution, the child has been fully immunized against: diphtheria; haemophilus influenzae type b; measles; mumps; pertussis; poliomyelitis; rubella; tetanus; hepatitis B; varicella; and any other disease deemed appropriate by the California Department of Public Health, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the U.S. DHHS, the American Academy of Pediatrics, and the American Academy of Family Physicians. (Health & Saf. Code Sec. 120335(b).)

Existing law provides the intent of the Legislature to provide exemptions from immunization for medical reasons or because of personal beliefs. (Health & Saf. Code Sec. 120325(b).)

Existing law provides that if a parent or guardian files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization, that child shall be exempt from the immunization requirements to the extent indicated by the physician's statement. (Health & Saf. Code Sec. 120370.)

Existing law requires, on and after January 1, 2014, that a separate form prescribed by the California Department of Public Health accompany a letter or affidavit to exempt a child from immunization requirements on the basis that an immunization is contrary to beliefs of the child's parent or guardian. The form must include:

- A signed attestation from a health care practitioner that indicates that the parent or guardian of the person who is subject to the immunization requirements, the adult who has assumed responsibility for the care and custody of the person, or the person if an emancipated minor, was provided with information regarding the benefits and risks of the immunization and the health risks of the communicable diseases listed above to the person and to the community.
- A written statement signed by the parent or guardian of the person who is subject to the immunization requirements, the adult who has assumed responsibility for the care and custody of the person, or the person if an emancipated minor, that indicates that the signer has received the information provided by the health care practitioner pursuant to the provision above. (Health & Saf. Code Sec. 120365(b).)

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Existing law provides, in relation to children exempted from immunization under the personal belief exemption, when there is good cause to believe that the person (i.e. child) has been exposed to one of the specified communicable diseases, that person may be temporarily excluded from the school or institution until the local health officer is satisfied that the person is no longer at risk of developing the disease. (Health & Saf. Code Sec. 120365(e).)

This bill would repeal the personal belief exemption and provisions relating to the exercise of the personal belief exemption above, leaving only a medical exemption to the immunization requirements above.

This bill would provide that the mandatory immunization provisions above do not apply to a home-based private school or to a student who is enrolled in an independent study program pursuant to the Education Code, as specified.

This bill would provide that when there is good cause to believe that a child whose documentary proof of immunization status does not show proof of immunization against the communicable diseases required has been exposed to one of those diseases, that child may be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting the disease.

COMMENT

1. Stated need for the bill

According to the authors:

In early 2015, California became the epicenter of a measles outbreak which was the result of unvaccinated individuals infecting vulnerable individuals including children who are unable to receive vaccinations due to health conditions or age requirements. According to the Centers for Disease Control and Prevention, there were more cases of measles in January 2015 in the United States than in any one month in the past 20 years. Measles has spread through California and the United States, in large part, because of communities with large numbers of unvaccinated people. Between 2000 and 2012, the number of Personal Belief Exemptions (PBE) from vaccinations required for school entry that were filed rose by 337 [percent]. In 2000, the PBE rate for Kindergartners entering California schools was under 1 [percent]. However, as of 2012, that number rose to 2.6 [percent]. From 2012 to 2014, the number of children entering Kindergarten without receiving some or all of their required vaccinations due to their parent's personal beliefs increased to 3.15 [percent]. In certain pockets of California, exemption rates are as high as 21 [percent] which places our communities at risk for preventable diseases. Given the highly contagious nature of diseases such as measles, vaccination rates of up to 95 [percent] are necessary to preserve herd immunity and prevent future outbreaks.

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This bill removes the ability for parents to file a personal belief exemption from the requirement that children receive vaccines for specific communicable diseases prior to being admitted to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center. It further provides a home school exemption for students who are of a single household or family.

The sponsor of this bill, Vaccinate California, writes that they believe it is “unfair and unreasonable for a small minority to put the rest of us at risk [. . .] Those who can vaccinate their children but refuse are jeopardizing their own children as well as the rest of us. [. . .] We ought to be able to send our kids to daycare and school without fear they will come home with measles or whooping cough.”

In support, an individual law professor, writes that “[w]hile California’s courts found that education is a fundamental interest under our constitution, that finding has been used in the wealth and race contexts; it has never been applied to prevent the state from regulating to make schools safer, as SB 277 tries to do. Safe schools are a precondition to education; and it’s well established that the state can act to obtain that goal: there are few interests more compelling than the health and safety of the students entrusted to our system. SB 277 helps protect this compelling interest, and by increasing herd immunity, would also protect the vaccine-deprived children themselves from disease.” This professor adds that the bill does not prevent children from getting an education: the bill “exempts a variety of homeschooling options, some with support from our private schools. If the parents are unwilling to protect children from disease, they have choices – even if those would not be their first choice.” Additionally, she adds that school immunization requirements have been upheld as constitutional, even without religious exemptions, “by every court – federal and state – that ruled on the issue, since the seminal case of *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944). Most recently, two circuit courts upheld them [in the 4th and 2nd Circuits] [citations omitted]. That’s because religious freedom do[es] not justify putting other states at risk of disease. [. . .]”

Multiple supporters, including the California State Association of Counties (CSAC), write that “California has seen an increase in the number of personal belief exemptions (PBE) from vaccinations. In fact, from 2010 to 2012, the number of children entering Kindergarten without receiving some or all of their required vaccinations rose by 25 percent. Vaccine coverage at the community level is vitally important for people too young to receive immunizations and those unable to receive immunizations due to medical reasons. States that easily permit personal belief exemptions from immunizations have significantly higher rates of exemptions and consequently a larger unimmunized population than states with more complex exemption approvals. However, school and child care immunization requirements have been shown to effectively increase immunization coverage, limit the spread of disease, and provide an overall public health benefit.” California Hepatitis Alliance (CalHEP) shares similar statistics, adding that “[s]ince 2000, the number of California families requesting a [PBE] from vaccinations required for school entry has risen by 337 [percent]. In 2000, the PBE

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rate for Kindergarteners entering California Schools was under 1 [percent] (0.77 [percent]).” CalHEP writes that “[p]rotecting the individual and the community from communicable diseases such as measles, mumps, and pertussis, is a core function of public health.”

The American Academy of Pediatrics argues that “[i]f there is a single place that children must be kept safe as humanly possible it is at school/child care.” California Academy of Family Physicians writes in support that while AB 2109 (Pan, Ch. 821, Stats 2012) “resulted last year in the first decrease in PBE use in a decade, the recent measles outbreak underscored the need to do more. In 2000, the Centers for Disease Control determined that measles had been eradicated in the United States. However, since December 2014, California has had 134 confirmed cases of measles across [13] counties. Twenty percent of those cases have required hospitalization. Efforts to contain the outbreak have resulted in mandatory quarantines and the redirection of public health resources to investigations into exposure. [. . .] Removing the PBE will protect the most vulnerable, babies too young to be immunized, and people who are immunocompromised, from the risks associated with contracting these diseases. It will also protect the community at large from increased outbreaks of vaccine-preventable disease.” The California School Nurses Association also writes in support that they know “certain schools and school districts have high rates of unvaccinated children [. . .] Having ‘community immunity’ varies by vaccine but it provides protection for those students and staff who for medical reasons are unable to be vaccinated or are immunocompromised.” [Footnote omitted.]

In support, the California Immunization Coalition adds that while AB 2109 “helped to tighten up the [PBE] process – it is not enough. We do not want to see a child die from measles before we take this important step to prevent additional outbreaks and spread of diseases. California needs to take stronger measures to protect children in our schools and in our communities.”

2. Liberty rights and parental rights balanced against the police powers of the state

According to the National Conference of State Legislatures (NCSL), California is one of 20 states that currently provides for a philosophical or personal belief exemption. Almost all states provide a religious exemption. There are also two states, Mississippi and West Virginia, that provide neither a religious, nor a philosophical, exemption. (NCSL, *States with Religious and Philosophical Exemptions from School Immunization Requirements* (Mar. 3, 2015) <<http://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>> [as of Apr. 19, 2015].)

This bill seeks to repeal California’s personal belief exemption to the state’s mandatory vaccination law as a condition upon entrance into public and private schools, as well as child care centers, and like institutions, leaving only a medical exemption to the existing immunization requirements. For parents electing to not vaccinate their children, the bill would provide that the mandatory immunization requirement does not apply to a

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home-based private school or to a student enrolled in an independent study program, as specified. Additionally, where there is good cause to believe that a child whose documentary proof of immunization status does not show proof of immunization against a communicable disease for which immunization is otherwise required by law and that the child has been exposed to the disease, this bill would allow for the child to be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting that disease.

Committee staff recognizes that there has been significant public debate over the propriety of mandating vaccinations. That debate has been reflected in both the support and opposition to this bill. Moving beyond the health arguments, and into the legal arguments, on the one hand, many people feel very strongly that they have the right, as parents, to make these medical decisions for their children with their children's doctor, and that any effort to limit their authority to do so would infringe not only upon that right, but the right to education for their children, and potentially even their religious beliefs. On the other hand, many other people believe that parents do not have the right to make choices that place other children and the larger public at risk, particularly when it comes to sending their children to schools where other children are placed at greater risk. This side also tends to believe that the state has both the authority and obligation to ensure the public health and safety against communicable diseases so that their children can safely go to school, as they are required to do. Each side, notably, relies heavily on "rights" and "liberties" in making their arguments against the other side.

As a matter of constitutional law, rights do not exist in a vacuum; in fact, they often clash with other rights, if not the rights of others around them. As such, when assessing whether certain actions are protected as a valid exercise of one's rights – or alternatively, when assessing the validity of limitations inherent to or placed upon that right by the government – the issue is, in actuality, trifold: does a constitutionally or statutorily cognizable right exist, either under federal or state law? Where does the right begin? And where does it end? Further, if the state does have the authority to place limits upon the exercise of that right, how extensive can those limits be? At what point does the state interest outweigh the right?

At the outset, the rights implicated by this bill include the right of the individual (or his or her parent, in the case of minors) to refuse a specific treatment or to exercise religious beliefs against the treatment – namely, vaccinations. Inversely, the bill also implicates the liberty interests of other students and members of the public to be free of harm that could be avoided by way of vaccination. It also implicates the right to education for all involved. With those issues in mind, this bill arguably seeks to exercise the police power authority of the state, and the state's *parens patriae* authority to step in to protect persons legally unable to act on their own behalf in order to prevent the spread of communicable diseases.

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a. Supreme Court has recognized that states' police powers include the power to stop the spread of communicable diseases

In 1905 the U.S. Supreme Court, in the case of *Jacobson v. Massachusetts* (197 U.S. 11), upheld a Massachusetts law mandating vaccinations for adults, holding that the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and safety (such as by stopping the spread of communicable diseases). In that case, the state required in the inhabitants of a city or town to be vaccinated only when, in the opinion of the Board of Health, vaccination was necessary for the public health or safety. There, the Court upheld the Massachusetts compulsory vaccination law despite arguments that such laws violate personal liberty rights protected under the 14th Amendment to the U.S. Constitution and that vaccines can cause injuries or dangerous effects. As expressed by the Court, it is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, not for the courts, to determine in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection of the public health. "The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases." (*Id.* at 35.)

In rendering its decision, the Court recognized the legitimate police power of the state to enact reasonable regulations to protect the public health and public safety in this fashion, but also acknowledged that the regulations cannot contravene the federal Constitution or infringe on rights granted or secured by the Constitution:

The authority of the State to enact this statute is to be referred to what is commonly called the police power – a power which the State did not surrender when becoming a member of the Union under the Constitution. [. . .] According to settled principles the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. [. . .] The mode or manner in which those results are to be accomplished within the discretion of the State, subject, of course, so far as Federal power is concerned, only to the condition that no rule prescribed by a State, nor any regulation adopted by a local governmental agency acting under the sanction of state legislation, shall contravene the Constitution of the United States or infringe any right granted or secured by that instrument. (*Id.* at 24-25.)

In *Jacobson*, the defendant argued that the Massachusetts compulsory vaccination law invaded his liberty rights by subjecting him "to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems

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best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person." (*Id.* at 26.) The Court, however, disagreed, writing that:

The liberty secured by the Constitution of the United States does not import an absolute right to each person to be at all times, and in all circumstances wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. . . . In *Crowley v. Christenson*, 137 U.S. 86, 89, we said: "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law." (*Id.* at 26-27.)

While the Court recognized that there is, of course, "a sphere within which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will," the Court also recognized it is "equally true that in every well-ordered society charged with the duty of serving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." (*Id.* at 29.)

The Court expressed that the power of the judiciary in reviewing legislative action in respect of a matter affecting the general welfare arises when "a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law." (*Id.* at 31 (internal citations omitted).) The Court held that this was not such a situation where there was no real or substantial relation between the law to the protection of public health and safety, or that the law was, beyond question, in palpable conflict with the Constitution. (*Id.* at 31-32.) Additionally, the Court declined to hold that "liberty" as secured by the U.S. Constitution dictated that the concerns of one, or of a minority (regarding vaccine safety), could override laws seeking to protect the public health and safety of all others. (*Id.* at 38.)

b. Liberty interests of the individual to refuse treatment post-Jacobson

While there is a general right to refuse medical treatment for adults encompassed in the liberty interests protected by the 14th Amendment, that right as noted above, is not absolute and can be regulated by the State. (See *Jacobson v. Massachusetts* (1905) 197 U.S. 11; see also *Cruzan v. Director, Missouri Dept. of Health* (1990) 497 U.S. 261,

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where the Court held that a competent adult has a fundamental right to accept or reject medical treatment, including the right to withdraw or withhold life-sustaining treatment that may cause or hasten death; and *Washington v. Harper* 494 U.S. 210 (1990) 221-222, 229, recognizing that prisoners have a significant liberty interest under the Due Process Clause of the Fourteenth Amendment to be free of unwanted administration of anti-psychotic medications, but also recognizing that such interests are adequately protected if the inmate has been provided notice and a hearing before a tribunal of medical and prison personnel at which the inmate could challenge the decision to administer the drugs.) Unlike in *Jacobson*, however, the question implicated by this bill involves not the right of the individual to refuse certain medical treatment, but the right of the parent(s) to refuse that treatment on behalf of the child. Whereas competent adults can make even the most reckless of decisions when it comes to their own health care, the same cannot be said of parents or guardians making health care decisions for children. Accordingly, in many instances, the Supreme Court has recognized the authority of the state to step into the family sphere, under the states' inherent *parens patriae* power to protect the health of children and other vulnerable members of society who are legally unable to act on their own behalf. (See discussion below for more.)

c. Parental rights

It is well established by U.S. Supreme Court precedent that the federal Constitution prohibits any state or local government from "depriving any person of life, liberty, or property without due process of the law." (U.S. Const., 14th Amend., Sec. 1.) The Supreme Court has interpreted the due process clause as "a promise of the Constitution that there is a realm of personal liberty which the government may not enter," including the right of parents to direct the upbringing of their children. (*Planned Parenthood v. Casey* (1992) 505 U.S. 833, 847; see also *Truxel v. Granville* (2000) 530 U.S. 57, 65: "We have long recognized that the Amendment's Due Process Clause . . . 'guarantees more than fair process.' [Citation omitted.] The Clause also includes a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.'" As stated by the Court, "the interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests." (*Truxel*, 530 U.S. at 65).)

The Supreme Court first recognized family autonomy and the right of parents to control the upbringing of their children using substantive due process in the 1923 case of *Meyer v. Nebraska* (1923) 262 U.S. 390. That case declared unconstitutional a state law that prohibited teaching in any language other than English in public schools. Two years later, the Court reaffirmed this principle, holding unconstitutional a state law that required children to attend public schools. (*Pierce v. Society of Sisters* (1925) 268 U.S. 510; see also Chemerinsky, *Constitutional Law Principles and Policies* (2011) 4th Edition, p. 829.) And while the Court has given great deference to parents in weighing the competing claims of parents and of the

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state on behalf of children in other cases such as *Wisconsin v. Yoder* (1972) 406 U.S. 205 (holding that Amish parents had a constitutional right based on their right to control the upbringing of their children and based on free exercise of religion, to exempt their 14- and 15-year old children from compulsory school attendance law), such deference is not limitless. In fact, some scholars believe that in both *Yoder* and another case involving the procedural due process rights of children when parents seek to have them committed, the Court undervalued the importance of ensuring the children's education and protecting against unneeded institutionalism (which is a massive curtailment of liberty). (See Chemerinsky at pp. 830-831.)

Of specific relevance to this bill, in *Prince v. Massachusetts* (1944) 321 U.S. 158, 166, the Court recognized that this right to make parental decisions regarding the care and upbringing of the child is not absolute, and can be interfered with if necessary to protect a child:

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. *Pierce v. Society of Sisters* [(1925) 268 U.S. 510]. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.

But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. *Reynolds v. United States*, 98 U.S. 145; *Davis v. Beason*, 133 U.S. 333. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. *People v. Pierson*, 176 N. Y. 201, 68 N. E. 243. (*Id.* at 166-167, (internal footnotes omitted).) (See Comment 3 below for more discussion on the issue of religious exemptions.)

As reflected in *Prince*, states have already encroached upon the family sphere by creating compulsory education laws, and child labor laws, which are largely accepted today, despite objections about the rights of parents to make these choices for their children regarding their schooling and work when those laws were first enacted.

Similarly, while this bill may be viewed as an unconstitutional encroachment of parental rights by some, it could arguably be viewed as a valid exercise of its police powers and the power of the state to intervene, under the *parens patriae* doctrine, on

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behalf of children to ensure that all children in public and private schools (and similar institutions, such as child care centers) maintain adequately high levels of immunization. Staff notes that without the recent broadening of the homeschooling exemption and the addition of the independent study option, many parents might not have been able to feasibly exercise any choice, due to the combination of financial constraints and compulsory education laws.

Thus, stated in another way, insofar as police powers must still be “reasonable” regulations, in order to be constitutional, this bill must strike a reasonable balance that furthers public health and safety without unduly encroaching on the private family sphere. Again, such balancing is important because even fundamental rights are not absolute; they do not, in other words, operate as “on/off” switches. Nor do state interests, for that matter. Instead, as one slides up, the other slides down; at some point, the right outweighs the state interest and at another point the state interest outweighs the right. Further, if the courts were to apply strict scrutiny to the bill (as it generally does with laws that impinge upon fundamental rights), the bill would survive if it is found to serve a compelling state interest (to ensure that the school and community vaccination levels overall remain sufficiently high) but at the same time is narrowly tailored to that purpose (it neither requires compulsory vaccination where children might have a medical condition that makes vaccination unsafe for that child, nor when children would otherwise be homeschooled or enrolled in independent study programs).

d. Fundamental interest in education under state law

While under the federal constitution, the U.S. Supreme Court has declined to find a fundamental right in education (*see San Antonio Independent School District v. Rodriguez* (1973) 411 U.S. 1), pursuant to a state Supreme Court decision, education is recognized as a fundamental right in California, fully protected and guaranteed under the California Constitution. Accordingly, the state must therefore provide children equal access to education subject to the equal protection clause of the state constitution. That being said, as much as education is a fundamental right under California law, it is also a requirement. California’s compulsory education laws require that children between six and 18 years of age to attend school, with a limited number of specified exceptions. (*See* Educ. Code Sec. 48200 et seq.; exceptions exist, for example, for children attending private schools; child being tutored by person with state credential for grade being taught; children holding work permits (subject to compulsory part-time classes); among other things).

For individuals on both sides of this larger debate, the bill implicates questions as to the fundamental interests of children, both vaccinated and unvaccinated alike, in education. While parents against vaccination would be forced to choose whether to vaccinate their child and send them to public or private school, or not vaccinate their child and exercise the home school or independent study option, parents who fear their child might be placed at an increased risk of harm as a result of being

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surrounded by unvaccinated children in a fairly confined environment, five days a week, must make a similar choice under existing law.

The American Civil Liberties Union (ACLU) writes a letter of concern, indicating that while it understands “the legitimate concerns that underlie the bill, and the potential harms of highly contagious diseases that present serious public health risks if ‘herd immunity’ levels are not reached or sustained” and appreciates “that vaccination against childhood diseases is a prudent step that should be promoted for the general welfare,” the ACLU “does not believe there has been a sufficient showing of need at present to warrant conditioning access to education on mandatory vaccination for each of the diseases covered by this bill for every school district in the state.” The ACLU further cautions that “[u]nlike other states, public education is a fundamental right under the California Constitution. (*Serrano v. Priest*, 5 Cal.3d 584 (1971)[“*Serrano I*”]; *Serrano v. Priest*, 18 Cal.3d 728 (1976)[“*Serrano II*”].) Equal access to education must therefore not be limited or denied unless the State demonstrates that its actions are ‘necessary to achieve a compelling state interest.’ [”*Serrano*, 18 Cal.3d at 768.]” To this end, ACLU recommends that if there is, in fact, a compelling governmental interest in mandating that students in every school be vaccinated against each of the enumerated diseases except for medical reasons, “the bill should be amended to explain specifically what that interest is, where it exists, and under what conditions and circumstances it exists.”

Staff notes, first, that this letter pre-dates the most recent amendments to expand the homeschooling exemption and add an exemption for children enrolled in independent study programs. Second, assuming that the ACLU maintains its concerns with respect to the current version of the bill, while education is indeed recognized as a fundamental interest in California fully protected and guaranteed under the state Constitution pursuant to *Serrano*,¹ and the state must therefore provide access to children equally to education subject to the equal protection clause of the federal and state constitutions, the bill does not facially discriminate against a suspect class. As stated by the *Serrano* court, in the case of legislation involving “suspect classifications,” or touching on “fundamental interests,” judicial review under the equal protection clause “requires active and critical analysis, subjecting the classification to strict scrutiny.” (*Id.* at 597.) Specifically, “[u]nder the strict

¹ As stated by the *Serrano I* court: “We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a ‘fundamental interest.’ In dicta, the court relied in part on the recognition of the California Constitution, which states in Article IX, section 1: “A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.” (*Id.* at 608.) Note that the Court in “*Serrano II*” recognized that the majority of the U.S. Supreme Court in cases subsequent to *Serrano I*, did not find a fundamental right to education protected, either implicitly or explicitly, under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution; instead the “interest of children in education was explicitly and implicitly protected and guaranteed by the terms of California Constitution” – the state constitution’s equal protection provisions under Article IV, sec. 16, and Article I, sec. 7. See *Serrano v. Priest* 18 Cal.3d. 768, 749-750 (including footnotes 19, 20), citing *San Antonio School District v. Rodriguez* (1973) 411 U.S. 1.

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standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest that justifies the law but also that the distinctions drawn by the law are *necessary* to further its purpose.” (*Id.* at 597 (internal citations omitted, emphases in original).)

The intent of the bill for all intents and purposes appears to be to protect the health and safety of the public by preventing the spread of communicable diseases that can have devastating, if not potentially fatal effects. At the same time, the bill seeks to provide children with access to education even if their parents elect to not vaccinate them, by way of homeschooling or independent study programs. Opponents argue (*see* Comment 5 for more) that most parents neither have the economic resources to leave gainful employment, nor the academic acumen to teach in the home, “rendering the application of SB 277 particularly punitive for all those not in the highest income brackets.” Many of the opponents raise concerns regarding the lack of options that are appropriate for children with exceptional needs or disabilities. To block unvaccinated children from a free, adequate, public education from the viewpoint of the opposition, is discriminatory and in violation of their rights.

As argued by the author, “California public school students have a right to education in California, but also that their schools be clean, safe, and functional. A safe school for many children is a school with a high level of community immunity which would protect them from known diseases. This legislation provides the most comprehensive measure to ensure high vaccination rates- by limiting the presence of those who are not vaccinated from a campus where children mingle and may be at risk of exposure to vaccine-preventable diseases. The students however are not barred from enrolling in a public education, they may do so, with the curriculum and assistance of the school, which allows them this option but strikes the balance of minimizing the exposure of unvaccinated students to a school campus.”

As currently drafted, it should be also noted that this bill raises a question as to what happens come January 1, 2016, to the unvaccinated students who are currently enrolled in a private or public elementary or secondary school or other covered institutions pursuant to an existing PBE, if this bill is signed into law. Potentially, these students can be brought into compliance pursuant to existing law, Section 120340 of the Health and Safety Code, which provides that a person who has not been fully immunized against one or more of the diseases may be admitted by the governing authority on condition that within time periods designated by regulation of the department he or she presents evidence that he or she has been fully immunized against all of these diseases. The author states:

Vaccination requirements under SB 277 should apply to students whose first enrollment in one of the mandated settings or whose 7th grade enrollment is after January 1, 2016. The bill will require some additional clarification, which we are committed to including.

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3. Repeal of statutory personal belief exemption effectively repeals any possible religious exemptions

As noted in Comment 2 above, California is one of 20 states that provide a “philosophical” exemption to its mandatory vaccination law for school age children. All but two states also provide a religious exemption. Most of those states do so separately from the philosophical exemption, whereas some, including California, Minnesota and Louisiana, do not explicitly recognize religion as a reason for claiming an exemption, though it is recognized that, as a practical matter, the non-medical exemption may encompass religious beliefs. (See NCSL, *States with Religious and Philosophical Exemptions from School Immunization Requirements* (Mar. 3, 2015) <<http://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>> [as of Apr. 19, 2015].) Accordingly, while California law does not expressly provide for a religious exemption, any possible claim of religious exemption that might be encompassed within the “personal belief” exemption would hereinafter be eliminated by the repeal of the statutory personal belief exemption. While *Jacobson v. Massachusetts* (see Comment 2a) suggests that it is a valid exercise of police powers to prevent the spread of communicable diseases, that case was decided prior to the application of the First Amendment’s Free Exercise Clause to the states. (See *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213 (1940).)

An objection has been raised by many of the opponents to this bill that this bill violates the constitutional right to freedom of religion, relying in part on cases such as *Wisconsin v. Yoder*. (See Comment 2c above.) The authors point to the case of *Phillips v. City of New York* (2012) 775 F.3d 538 to illustrate why compulsory vaccination laws are valid, even without a religious exemption. In that case, the Second Circuit Court of Appeal held that New York could constitutionally require that all children be vaccinated to attend public school and that the New York law actually “goes beyond what the Constitution requires by allowing an exemption for parents with genuine and sincere religious beliefs,” citing the U.S. Supreme Court decision in *Prince v. Massachusetts*, where the Supreme Court held that “the right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.” (*Id.* at 533.)

Additionally, whereas under pre-1990 Supreme Court precedents, government actions burdening religions would only be upheld if they were necessary to achieve a compelling governmental purpose, in 1990, the Court held in *Employment Div., Dept. of Human Resources of Oregon v. Smith* (1990) 474 U.S. 772, that the free exercise clause cannot be used to challenge neutral laws of general applicability. In that case, the Oregon law prohibiting the consumption of peyote, a hallucinogenic substance, was deemed neutral because it was not motivated by a desire to interfere with religion and it was a law of general applicability because it applied to everyone. Thus, as interpreted in more recent Supreme Court cases, *Smith* “largely repudiated the method of analysis used in prior free exercise cases like *Wisconsin v. Yoder* [internal citation omitted] and *Sherbert v. Verner* [(1963) 374 U.S. 398]” where the Court “employed a balancing test that

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considered whether a challenged government action that substantially burdened the exercise of religion was necessary to further a compelling state interest." (*Holt v. Hobbs* (2015) 135 S. Ct. 853, 859; *see also Burwell v. Hobby Lobby Inc.* (2014) 134 S.Ct. 2751, 2760.) While Congress has taken actions to supersede *Smith*, as reflected in cases such as *Hobby Lobby*, and thereby ensure that strict scrutiny is applied when the law substantially burdens religion, those later decisions appear based on federal law, the Religious Freedom Restoration Act, to which California has no counterpart.

Staff notes that in Mississippi, one of the two states that does not provide for either a philosophical or religious exemption to its compulsory vaccine law, the Supreme Court of that state has held that, "requiring immunization against certain crippling and deadly diseases particularly dangerous to children before they may be admitted to school serves an override and compelling public interest, and that such interest extends to the exclusion of a child until such immunization has been effected, not only as a protection of that child but as a protection of the large number of other children comprising the school community and with whom he will be in daily close contact in the school room." (*Brown v. Stone* (1979) 378 So.2d 218, 222.) In discussing parental rights and duties, the court warned that "[i]t must not be forgotten that a child is indeed himself an individual, although under certain disabilities until majority, with rights in his own person which must be respected and may be enforced. Where its safety, morals, and health are involved, it becomes a legitimate concern of the state. [. . .] To the extent that [the compelling public purpose of the state law] may conflict with the religious beliefs of a parent, however sincerely, entertained, the interests of the school children must prevail." (*Id.* at 222-223.) Accordingly, the court upheld Mississippi's statute mandating vaccination before entry into school as a reasonable and constitutional exercise of its police power, but struck down the statute's religious exemption. The court wrote that to give effect to the religious exception, "which would provide for the exemption of children of parents whose religious beliefs conflict with the immunization requirements, would discriminate against the great majority of children who have no such religious conviction" in violation of the 14th Amendment's Equal Protection Clause, "in that it would require the great body of school children to be vaccinated and at the same time expose them to the hazard of associating in school with children exempted under the religious exemption who had not been immunized as required by the statute" (*Id.* at 223.)

4. Amendment to further narrow the bill to the compelling state interest

As noted above, given the above constitutional issues, it is important that the bill be narrowly tailored to a compelling state interest in the event that reviewing courts apply strict scrutiny in light of the rights that could be potentially impinged upon by this bill. Despite the recent amendments, there is an argument that the bill is too broad with respect to the "catch all" type provision ("paragraph 11") that would require that the child be immunized against "any other disease deemed appropriate by the California Department of Public Health, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the U.S. DHHS, the American

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Academy of Pediatrics, and the American Academy of Family Physicians" before being granted unconditional entry into schools, day care centers, or developmental centers. (Health & Saf. Code Sec. 120335(b)(11).) In other words, paragraph 11 has the potential to dramatically expand the scope of the bill and disrupts the careful balancing of the various rights involved, as discussed above. Accordingly, the following amendment would be suggested to maintain the status quo policy decision made in allowing for this 11th category of vaccines, but limit the bill to only those 10 listed vaccines currently reflected in the Health and Safety Code.

Suggested amendment:

Add a new provision to the Health and Safety Code, following Section 120335, that provides: "Notwithstanding Section 120325 and Section 120335, any immunizations required for diseases added pursuant to paragraph 11 of subdivision (a) of Section 120325 or paragraph 11 of subdivision (b) of Section 120335, may only be mandated prior to a pupil's first admission to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, if exemptions are allowed for both medical reasons and personal beliefs.

Some opponents have raised questions as to whether the bill is actually "narrowly tailored" if the issue of public health could be addressed by mandating vaccines on a community by community or school district or school district basis. (See Comment 7 for example). In response, the authors assert that a statewide approach is the correct approach because:

[t]his legislation aims to prevent outbreaks, and pockets of unimmunized individuals may appear at any district at any time. To provide a statewide standard, allows for a consistent policy that can be publicized in a uniform manner, so districts and educational efforts may be enacted with best practices for each district. While pockets cluster in regionalized area, districts may have one school which does not reach community immunity, and therefore should have a policy which they can easily implement. Further in consultation with various health officers, they believe a statewide policy provides them the tools to protect all children equally from an outbreak.

5. Opposition

Staff notes that the Committee received thousands of letters on this bill. To the extent possible, the following summary seeks to summarize the arguments made in the letters.

Families for Early Autism Treatment (FEAT) writes that "the denial of an effective, appropriate education is damage that cannot be mitigated. The denial of childcare to families will result in economic hardship that will not be overcome by most, and will create segregation based upon a characteristic of an individual's private health record."

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FEAT urges this Committee to consider that: a free public education is a fundamental right provided in the State Constitution; the equal protection clause further upholds a fundamental right to freedom from the threat of bias or discriminatory consequence imposed by government; the right to exercise the free expression of religion and core beliefs is protected by both the State and U.S. Constitutions. FEAT believes that because of these issues, "California Parents are soundly protected to make personal beliefs decisions for vaccinations."

FEAT argues (and other opponents similarly assert) that the majority of parents do not have economic resources to leave gainful employment nor do they possess the academic acumen to teach in the home rendering the application of SB 277 particularly punitive for all those not in the highest income brackets. FEAT also argues, among other things, that independent study under the direction of the public school is voluntary. Specifically, individuals with exceptional needs (as defined under the Education Code to mean a child with a disability as defined under federal law whose impairment requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the individual is provided a free appropriate public education, as specified, and who comes within one of specified age categories, including between the ages of five and 18 years, inclusive) may only participate when indicated in the student's individualized education program.

FEAT raises a host of other arguments that relate to: informed consent and the availability of medical exemptions; religious discrimination; least restrictive environments for those with special needs required under the Education Code and the Federal I.D.E.A. [Individuals with Disabilities Education Act]; the Developmental Disabilities Assistance and Bill of Rights Act of 2000; Welfare and Institutions Code, the Lanterman Act's maximal participation and choice requirements for medical, community, and education services from agencies receiving state funds; home based education misconceptions; absence of public funding of education for student who is excluded or dis-enrolled from school; and issues surrounding necessary approvals to access home-based education.

Homeschool Association of California (HSC) opposes this bill because it "would negatively impact the freedom to homeschool in the state of California and would *make it impossible for many families to choose to homeschool legally.*" (Emphasis in original.) HSC comments that while private tutoring is a third legal option, the tutor must hold a currently valid state teaching credential for the grades and subjects taught under California law and hiring such tutors would be very expensive and most parents do not hold such credentials. Thus, "telling families whose children have not been fully vaccinated on schedule that they can homeschool using the tutoring option is not meaningful or realistic." Additionally, HSC contends that the choice of "vaccinate or homeschool" is not true because the bill "prohibits children from attending any private or public school, even if the child spends most education time in the family home." Innumerable letters from individuals write to raise relatively similar points regarding various constitutional rights, informed consent, vaccine safety/injuries, absence of a

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health crisis, lack of real choice for parents/inadequacy of the current exemptions in the bill, and the like. One such letter reflects the following:

- AB 2109 from 2012 is working and that there has already been a 20 percent decline in PBEs, thereby eliminating the need for sweeping legislation that removes a parent's right to informed consent.
- The California Constitution states that a free public education is a right for all children. Even children who are positive for HIV or Hepatitis B are allowed to attend public school. Denying a child this right based upon vaccination status is discriminatory and unconstitutional, adding that there will be social ramifications if vaccinated and under/unvaccinated children are forced to be segregated.
- This bill removes freedom of religion as well as parental rights as they cannot afford to homeschool their children and would otherwise be forced to submit their child to medical procedures with risks or leave the state.
- California vaccination rates are high—higher than the national average for each disease listed on the CDC schedule.
- The U.S. Supreme Court has recognized that vaccines are “unavoidably unsafe,” citing the case of *Bruesewitz v. Wyeth LLC* (2011) 131 S.Ct. 1068.
- Parents should have the right to determine for themselves what substances are injected into their child's body without giving up their children's right to a free public education.
- Any law that compels the public “to use a pharmaceutical product which carries an unpredictable risk of injury/death for a minority of vulnerable individuals is not humane.”

Californians for Medical Freedom – Tahoe, raises similar points, also arguing that the bill removes federally mandated rights of services to students with disabilities under the federal IDEA. This group, like many others, points to the National Childhood Vaccine Injury Act (NVIC) and the fact that the U.S. government “has paid out more than \$3 billion to the victims of vaccine injury” as support for why medical choice is appropriate. “If there is risk of injury or death there must be a choice.” In contrast, they argue that “[v]accination rates of California schoolchildren are high at 98.64 [percent]” and cite the success of recent legislation, AB 2109, which they write has resulted “in a 19 [percent] decrease in exemptions amongst kindergarteners in just one year. The public health concern,” they write, “is already adequately addressed with current California laws.” In other words, as stated by the California Chiropractic Association, “SB 277 is a solution in search of a problem.”

Educate.Advocate. raises many similar points and adds that PBEs “DO NOT represent the number of unvaccinated individuals in the state. A PBE must be obtained for any child who misses one dose of a vaccine or is on a staggered vaccine schedule. The state does not keep track of this information; it treats all PBE's equally.” Educate.Advocate. writes that the children served by their organization are all in special education and on an individualized education plan. “Many of these children also have pre-existing medical conditions (mitochondrial dysfunction, compromised immune system) making it impossible to vaccinate them without hurting them further. Obtaining a medical

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exemption is very difficult to receive as the CDC's pink book guidelines are incredibly narrow and trump patient and doctor reasons. [. . .] The only option for these children has been the personal belief exemption. Stripping families such as these of the right to get a personal belief exemption is discriminatory and in violation of the Americans with Disabilities Act."

ParentalRights.Org writes in opposition that "[w]hile we appreciate the intent of the amendment to exempt homeschoolers from the vaccination requirement, it is not sufficient to protect the rights of parents and children in California. While there are many parents with strong convictions that the risks of vaccines to their child (as reflected in lengthy disclaimers which accompany these products) outweigh the potential benefits, many of these same parents are also deeply convinced that the best educational opportunity they can provide their child is in the public schools. These parents should not be forced to give up their rights in one area to exercise their rights in another. No child should have to forego the best available education for the sake of his best health, nor give up his best health for the sake of a better education."

6. Oppose unless amended

The California Naturopathic Doctors Association (CNDA) states that it supports immunization for the prevention of disease and the public health objective of achieving high rates of immunity to infectious disease but opposes this bill unless it is amended to include Naturopathic Doctors as providers who can sign medical waivers for vaccination. CNDA argues that as licensed primary care doctors who can diagnose medical conditions such as anaphylaxis and immunodeficiency, reasons outlined in the CDC's list of contraindications to common pediatric vaccinations, naturopathic doctors must also be able to sign medical waivers for vaccination, when such medical conditions exist.

7. Concerns

A San Lorenzo Valley Unified School District (SLVUSD) superintendent writes a letter of concerns, based in large part on points raised in the Senate Health Committee hearing. Noting both the ACLU's letter of concern and recent successes of AB 2109 (*see* Background), SLVUSD comments that "[t]here are some geographic pockets in the state where PBE rates are higher than average. We understand the concerns this raises, but alternatives to SB 277, including 'educate and encourage' efforts could address those concerns." These efforts, they note, are the focus of the federal government's National Adult Immunization Plan, as opposed to mandate. SLVUSD also questions what public health risk these PBE rates represent given that only 0.7 percent of children nationwide are fully vaccinated and that most parents request a PBE to "selectively" vaccinate (for example, choosing to vaccinate against pertussis, tetanus, and measles but opting out of those they consider unnecessary like Hepatitis B.) "PBE rates," it writes, "do not equate to a public health risk for a specific disease. SLVUSD believes the "educate and encourage" efforts used in conjunction with better data on actual vaccination opt-out by

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disease in each area would be a better legislative solution than statewide mandates. SLVUSD is concerned about the education options left for children under SB 277 and the fact that the bill allows parents to homeschool on their own (private school affidavit)—not through public or private school satellite programs.

8. Author's technical and clarifying amendments

This bill currently provides that when there is good cause to believe that a child whose documentary proof of immunization status does not show proof of immunization against a disease listed in subdivision (b) of Section 120335 has been exposed to one of those diseases, that child may be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting the disease. The first amendment would clarify that this temporary exclusion authority applies only if there is good cause to believe that a student has been exposed to a disease listed under the mandatory vaccination law and his or her documentary proof of immunization status does not show proof of immunization against that specific disease.

The author is also making a second, technical amendment that would place the homeschooling and independent study exemption within a separate subdivision to ensure that the exemption also applies to seventh grade level checks for pertussis.

Author's amendments:

- (1) On page 5, strike lines 26-29, inclusive and on line 30 strike "disease," and insert:
"(b) When there is good cause to believe that a child has been exposed to a disease listed in subdivision (b) of Section 120335 and the child's documentary proof of immunization status does not show proof of immunization against that disease,"
- (2) On page 4, strike lines 16-20 and on page 5 after line 10, insert: "(f) This section does not apply to a home-based private school or a pupil who is enrolled in an independent study program pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code."

Support: Alameda County Board of Supervisors; American Federation of State, County and Municipal Employees (AFSCME) AFL-CIO; American Academy of Pediatrics; American Lung Association; American Nurses Association\California; Biocom; California Academy of Family Physicians (CAFP); California Association of Nurse Practitioners (CANP); CAPG; California Chapter of the American College of Emergency Physicians (California ACEP); California Children's Hospital Association; California Coverage and Health Initiatives; California Health Care Institute; California Health Executives Association of California (CHEAC); California Hepatitis Alliance (CalHEP); California Immunization Coalition; California Hospital Association; California Medical

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Association; California School Nurses Association; California Pharmacists Association; California Optometric Association; California Primary Care Association; California School Boards Association (CSBA); California School Employees Association (CSEA); California School Nurses Organization; California State Association of Counties (CSAC); California State PTA; Child Care Law Center; Children Now; Children's Defense Fund-California; Children's Specialty Care Coalition; City of Beverly Hills; City of Pasadena; County Health Executives Association of California; County of Los Angeles; County of Santa Clara Board of Supervisors; County of Santa Cruz Board of Supervisors; County of Yolo Board of Supervisors; First 5 Association of California; Health Officers Association of California; Kaiser Permanente; Insurance Commissioner Dave Jones; Kaiser Permanente; Los Angeles County Board of Supervisors; March of Dimes California Chapter; Marin County Board of Supervisors (support if amended); National Coalition of Black Women; Osteopathic Physicians and Surgeons of California (OPSC); Providence Health and Services Southern California; Reed Union School District; San Dieguito Unified School District; San Francisco Unified School District; Secular Coalition for California; Silicon Valley Leadership Group; Solana Beach School District; The Children's Partnership; UAW Local 5810; numerous individuals

Opposition: Alder Grove Charter School - Director; American Civil Liberties Union (concern); Association of American Physicians & Surgeons; Association of Personalized Learning Schools & Services (APLUS); AWAKE California; California Chiropractic Association; California Coalition for Health Choice; California Coalition for Health Choice, the Central Valley and Central Sierra Chapters; California Naturopathic Doctors Association (oppose unless amended); California Nurses for Ethical Standards; California ProLife Council; California Right to Life Committee, Inc.; Californians for Freedom of Choice; Californians for Medical Freedom- Tahoe; Canary Party; Capitol Resource Institute; Children's Healthcare is a Legal Duty, Inc. (CHILD); Connecting Waters Charter School; Educate. Advocate.; Families for Early Autism Treatment (FEAT); Homeschool Association of California; Libertarian Party of Sacramento County; National Autism Association of California; National Vaccine Information Center; Our Kids, Our Choice (OKOC); Pacific Justice Institute Center for Public Policy; ParentalRights.Org; Plumas Charter School's Executive Director; Pro-Parental Rights; Safe Minds; Saint Andrew Orthodox Christian Church - Pastor; San Lorenzo Valley Unified School District - Superintendent (concerns); UnblindMyMind; Vaccine-Injury Awareness League; numerous individuals

HISTORY

Source: Vaccinate California

Related Pending Legislation: SB 792 (Mendoza) would prohibit a person from being employed at a day care center or day care home unless he or she has been immunized against influenza, pertussis, and measles.

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Prior Legislation:

AB 2109 (Pan, Ch. 821, Stats. 2012) *See* Background.

Prior Vote:

Senate Education Committee (Ayes 7, Noes 2)

Senate Health Committee: (Ayes 6, Noes 2)
