

EXHIBIT 2

Date of Hearing: June 9, 2015

ASSEMBLY COMMITTEE ON HEALTH
Rob Bonta, Chair
SB 277 (Pan and Allen) – As Amended May 7, 2015

SENATE VOTE: 25-11

SUBJECT: Public health: vaccinations.

SUMMARY: Eliminates non-medical exemptions from the requirement that children receive vaccines for certain infectious diseases prior to being admitted to any public or private elementary or secondary school, or day care center. Specifically, **this bill:**

- 1) Deletes the exemption based on personal beliefs from the existing immunization requirement for children in child care and public and private schools. Deletes related law requiring a form to accompany a personal belief exemption (PBE).
- 2) Exempts students enrolled in home-based private schools or in an independent study program from the existing immunization requirement.
- 3) Permits the California Department of Public Health (DPH) to add diseases to the immunization requirements only if exemptions are allowed for both medical reasons and personal beliefs.

EXISTING LAW:

- 1) Prohibits the governing authority of a school or other institution from unconditionally admitting any person as a pupil of 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 his or her first admission to that institution, he or she has been fully immunized against diphtheria, *Haemophilus influenzae* type b (Hib meningitis), measles, mumps, pertussis (whooping cough), poliomyelitis, rubella (German measles), tetanus, hepatitis B, and varicella (chickenpox).
- 2) Permits DPH to add to this list any other disease deemed appropriate, taking into consideration the recommendations of the Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices (ACIP) and the American Academy of Pediatrics Committee on Infectious Diseases.
- 3) Waives immunization requirements in 1) above, if the 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.
- 4) Waives the above immunization requirements if the parent, guardian, or an emancipated minor, files a letter with the governing authority stating that the immunization is contrary to his or her beliefs.

- 5) Requires a separate form prescribed by DPH to 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. Requires the form to include:
 - a) A signed attestation from the health care practitioner that indicates that the parent, guardian, or emancipated minor, was provided with information regarding the benefits and risks of the immunization and the health risks of the specified diseases to the person and to the community. Requires the attestation to be signed not more than six months before the date when the person first becomes subject to the immunization requirement for which exemption is being sought.
 - b) A written statement signed by the parent, guardian, or emancipated minor, that indicates that the signer has received the information provided by the health care practitioner pursuant a) above. Requires the statement to be signed not more than six months before the date when the person first becomes subject to the immunization requirements as a condition of admittance.
- 6) Permits a local health officer to temporarily exclude from the school or institution a child for whom the requirement has been waived, whenever there is good cause to believe that he or she has been exposed to one of the specified communicable diseases, until the local health officer is satisfied that the child is no longer at risk of developing the disease.

FISCAL EFFECT: None.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, in early 2015, California became the epicenter of a measles outbreak, which spread in large part because of communities with large numbers of unvaccinated people. According to the CDC, there have been more cases of measles in January 2015 than in any one month in the past 20 years. Between 2000 and 2012, the number of PBEs from vaccinations required for school entry that were filed rose by 337%. In 2000, the PBE rate for kindergartners entering California schools was under 1%. However, by 2013, that number rose to 3.15%. In certain geographic pockets of California, exemption rates are 21% or more, placing our communities at risk for the rapid spread of entirely preventable diseases, according to the author. Given the highly contagious nature of diseases such as measles, vaccination rates of up to 95% are necessary to protect the public health of the community and prevent future outbreaks.
- 2) **BACKGROUND.** The diseases that vaccines prevent can be dangerous, or even deadly. According to the CDC, vaccines reduce the risk of infection by working with the body's natural defenses to help it safely develop immunity to disease. When bacteria or viruses invade the body, they attack and multiply, creating an infection. The immune system then has to fight the illness. Once it fights off the infection, the body is left with a supply of cells that help recognize and fight that disease in the future. Vaccines contain the same antigens or parts of antigens that cause diseases, but the antigens in vaccines are either killed or greatly weakened. This exposure to the antigens teaches the immune system to develop the same response as it does to the real infection so the body can recognize and fight the disease in the future.

Public health experts agree that vaccines represent one of the greatest achievements of science and medicine in the battle against disease. Vaccines are responsible for the control of many infectious diseases that were once common around the world, including polio, measles, diphtheria, pertussis, rubella, mumps, tetanus, and Hib meningitis. Vaccine helped to eradicate 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.

Vaccine-preventable diseases have a costly impact, resulting in doctor's visits, hospitalizations, and premature deaths. Sick children can also cause parents to lose time from work. CDC recommends routine vaccination to prevent 17 vaccine-preventable diseases that occur in infants, children, adolescents, or adults.

In the U.S., the high vaccination rate for routinely recommended immunizations for infant and childhood diseases has brought about dramatic declines in the incidence of polio, measles, mumps, rubella, *Haemophilus influenza* type b, hepatitis, and chickenpox. In the past decade, recommendations for annual influenza vaccination have been expanded to encompass all children six months to eighteen years of age, and new vaccines have been added to the immunization schedule to help protect infants from rotavirus disease and adolescents from meningitis. As a result of the advances in developing vaccines and including them as standard of care, most diseases that are preventable by vaccination are at record low levels in the U.S.

For years many of these diseases were thought to be ordinary childhood experiences and many older adults had these diseases as children. Nevertheless, they are serious deadly diseases for some. For example, measles in children has a mortality rate as high as about one in 500 among healthy children, higher if there are complicating health factors.

In the past couple of decades, controversy has arisen about vaccines and autism, the best number of injections to be administered during a single visit or over the course of the first years of life, and vaccine ingredients which has prompted parents, the media, policy makers, and others to raise concerns about the safety of recommended immunizations as well as the vaccination schedule. Despite their positive impact on health and well-being, vaccines have had a long history of arousing anxiety. The rapid growth of the Internet and social media has made it easier to find and disseminate immunization-related concerns and misperceptions. According to a 2011 study published in the journal *Health Affairs*, results indicate that although the overwhelming majority of parents surveyed intended to vaccinate their children fully, a majority of parents still had questions or concerns about vaccines.

- 3) **SCHOOL IMMUNIZATION REQUIREMENTS.** States enact laws or regulations that require children to receive certain vaccines before they enter childcare facilities and school, but with some exceptions, including medical, religious, and philosophical objections. School vaccination requirements are thought to serve an important public health function, but can also face resistance.

An article published in the 2001-02 *Kentucky Law Journal* reviewed historical and modern legal, political, philosophical, and social struggles surrounding vaccination requirements. The authors stated that though school vaccination has been an important component of public health practice for decades, it has had a controversial history in the U.S. and abroad. Historical and modern examples of the real, perceived, and potential harms of vaccination,

governmental abuses underlying its widespread practice and strongly held religious beliefs have led to fervent objections among parents and other persons who object to vaccines on legal, ethical, social, and epidemiological grounds. The article states that public health authorities argue that school vaccination requirements have led to a drastic decrease in the incidence of once common childhood diseases. Those who object to vaccines tend to view the consequences of mass vaccination on an individualistic basis, focusing on alleged or actual harms to children from vaccinations. As part of their research, the authors compared childhood immunization rates and rates of vaccine-preventable childhood diseases before and after the introduction of school vaccination requirements. The data suggest that school vaccination requirements have succeeded in increasing vaccination rates and reducing the incidence of childhood disease

Current state law mandates immunization of school-aged children against 10 specific diseases. Each of the 10 diseases was added to California code through legislative action, after careful consideration of the public health risks of these diseases, cost to the state and health system, communicability, and rates of transmission. The Legislature has a long history of thoughtful consideration for which diseases pose the most serious health risks to the public. Following is a brief summary of activity related to mandated immunizations for children enrolling in school:

- 1889: School districts first allowed to exclude a student who is not vaccinated against smallpox, and schools were required to maintain a list of unvaccinated children (SB 92, Briceland, Chapter 24).
- 1961: Polio immunization added as a requirement, as well as the first appearance of a philosophical exemption (AB 1940, DeLotto and Rumford, Chapter 837).
- 1977: Diphtheria, pertussis, tetanus, and measles were added to immunization requirements for children entering school (SB 942, Rains, Chapter 1176).
- 1979: Mumps and rubella were added to the list (AB 805, Mangers, Chapter 435).
- 1992: *Haemophilus influenzae* type b was added (AB 2798, Floyd, Chapter 1300, and AB 2294, Alpert, Chapter 1320).
- 1995 and 1997: Hepatitis B was added (AB 1194, Takasugi, Chapter 291, Statutes of 1995 and AB 381, Takasugi, Chapter 882, Statutes of 1997).
- 1999: The Legislature voted to add Hepatitis A to the list, but it was vetoed by Governor Davis (AB 1594, Florez).
- 1999: Varicella was added to the list (SB 741, Alpert, Chapter 747).
- 2007: The Legislature voted to add pneumococcus to the list, but it was vetoed by Governor Schwarzenegger (SB 533, Yee).
- 2010: Tetanus, diphtheria and pertussis (TDaP) booster was required for 7th graders (AB 354, Arambula, Chapter 434).

All of the diseases for which California requires school vaccinations are very serious conditions that pose very real health risks to children. Most of the diseases can be spread by contact with other infected children. Tetanus does not spread from student to student but because it is such a serious potentially fatal disease, and it is easily preventable by vaccine, the vaccination of children is required prior to enrollment in school.

- 4) **COMMUNITY IMMUNITY.** Herd immunity occurs when a significant proportion of the population (or the herd) has been vaccinated, and this provides protection for unprotected individuals. The larger the number of people who are vaccinated in a population, the lower

the likelihood that a susceptible (unvaccinated) person will physically come into contact with the infection. It is more difficult for diseases to spread between individuals if large numbers of people are already immune, and the chain of infection is broken. The reduction of herd immunity places unvaccinated persons at risk, including those who cannot receive vaccinations for medical reasons. Those who cannot receive vaccines include those with compromised immune systems, older adults, small children and babies, all depending on the vaccine.

There the protective effect of herd immunity wanes as large numbers of children do not receive some or all of the required vaccinations, resulting in the reemergence of vaccine preventable diseases in the U.S. Statewide statistics indicate that in 2014-15 school year, 90.4% of kindergartens received all required immunizations. The widespread reporting of statewide numbers, however, potentially mask a better understanding of more relevant data, such as town, city, or county vaccination rates. Because students are not interacting with every individual in the entire state, the local vaccination rate is more relevant to the discussion of community immunity.

The vaccination rate in various communities varies widely across the state. Those areas become more susceptible to an outbreak than the state's overall vaccination levels may suggest. These communities make it difficult to control the spread of disease and make us vulnerable to having the virus re-establish itself.

Studies find that when belief exemptions to vaccination guidelines are permitted, vaccination rates decrease. An analysis by the *New York Times* found that more than a quarter of schools in California have measles-immunization rates below the 92-94% recommended by the CDC. Research shows that people with lower vaccine acceptance tend to group together in communities. A study recently published in the journal *Pediatrics* found that schools with high PBE rates are clustered in suburbs in the peripheral areas of California cities. The same analysis found that schools with low proportion of white students, or a high proportion of students receiving free or reduced lunch, were more likely to have high vaccination rates (less PBEs).

- 5) **CALIFORNIA MEASLES OUTBREAK.** The authors point to an outbreak of measles linked to Disneyland in in December 2014 as one of the reasons for the introduction of this bill. This outbreak led to 131 confirmed measles cases reported in California as part of this outbreak. The outbreak, now declared over by DPH, led to 19% of those infected requiring hospitalization. The outbreak likely started from a traveler who became infected overseas with measles, then visited the amusement park while infectious; however, no source was identified. Analysis by CDC scientists showed that the measles virus type in this outbreak (B3) was identical to the virus type that caused the large measles outbreak in the Philippines in 2014.

According to the CDC, measles is one of the first diseases to reappear when vaccination coverage rates fall. In 2014, there were over 600 cases reported to the CDC, the highest in many years. Between 2000 and 2007, the average number of cases was 63 per year, less than half the number of the Disney outbreak, which is one of five outbreaks so far this year reported by the CDC.

Of the confirmed cases, DPH reported:

- Forty-two cases visited Disneyland during December 17-20, 2014 where they are presumed to have been exposed to measles;
- Thirty-one are household or close contacts to a confirmed case;
- Fourteen were exposed in a community setting (e.g., emergency room) where a confirmed case was known to be present;
- Forty-four have unknown exposure source but are presumed to be linked to the outbreak based on a combination of descriptive epidemiology or strain type;
- Five cases are known to have a different genotype from the outbreak strain; and,
- Among measles cases for whom DPH has vaccination documentation, 57 were unvaccinated and 25 had 1 or more doses of measles, mumps, and rubella (MMR) vaccine. A number of those unvaccinated had a personal belief exemption and also include many infants too young to be vaccinated.

- 6) **NATIONAL CHILDHOOD VACCINE INJURY ACT.** During the mid-1970s, there was an increased focus on personal health and more people became concerned about vaccine safety. Several lawsuits were filed against vaccine manufacturers and healthcare providers by people who believed they had been injured by the Tdap vaccine. Damages were awarded despite the lack of scientific evidence to support vaccine injury claims. In 1976, a preemptive attempt to conduct a nationwide influenza vaccination campaign for the swine flu stoked peoples' fears. The predicted epidemic did not occur and there were some who argued this particular influenza vaccine resulted in serious side effects.

As a result, potential liability costs and vaccine prices soared, and several vaccine manufacturers halted production. A vaccine shortage resulted and public health officials became concerned about the return of epidemic disease.

To reduce liability and respond to public health concerns, Congress passed the National Childhood Vaccine Injury Act (NCVIA) in 1986. The NCVIA established the National Vaccine Program Office (NVPO) to coordinate immunization related activities among various federal agencies and requires health care providers who give vaccines to provide an information statement to the patient or guardian that contains a brief description of the disease as well as the risks and benefits of the vaccine. Additionally, the NCVIA requires health care providers to report certain adverse health events following vaccination to the Vaccine Adverse Event Reporting System (VAERS). The VAERS system remains an important source of information for the CDC and others to monitor the vaccine program, but the system allows self-reporting by any citizen or healthcare provider what they believe to be an adverse vaccine-related event, but the event numbers publicly available have not necessarily been medically verified or scientifically studied. The National Vaccine Injury Compensation Program (NVICP) was created to compensate those injured by vaccines on a "no fault" basis. The NVICP has been loudly criticized by some for inefficient operations, and for providing legal immunity to the pharmaceutical industry.

The NCVIA established a committee from the Institute of Medicine (IOM) to review the literature on vaccine reactions. This group concluded that there are limitations in our knowledge of the risks associated with vaccines. The group looked at 76 health problems to see if they were caused by vaccines. Of those, 50 (66%) had no or inadequate research to form a conclusion. The IOM identified several specific problems, such as a limited understanding of biological processes that underlie adverse events, incomplete and inconsistent information from individual reports, poorly constructed research studies (not enough people enrolled for the period of time), inadequate systems to track vaccine side effects, and few experimental studies were published in the medical literature. The CDC states that in the time since the publication of the IOM reports in the 1990s, significant progress has been made to monitor side effects and conduct research relevant to vaccine safety. In 2011 the IOM published *Adverse Effects of Vaccines: Evidence and Causality*, representing an extensive study of peer-reviewed vaccine related research to date. The IOM Committee reviewed eight vaccines given to children or adults (MMR, varicella, influenza, hepatitis A, hepatitis B, human papillomavirus, meningococcal, and DTP) and again found that vaccines are generally very safe and that serious adverse events are quite rare.

- 7) **VACCINES AND AUTISM.** The idea that autism is caused by vaccination is influencing public policy, even though rigorous studies do not support this hypothesis. The hypothesis is based on the observation that the number of autism cases increased in the 1980s, coinciding with a push for greater childhood vaccinations, which increased above recommended levels children's exposure to mercury in the vaccine preservative thimerosal. However, autism diagnosis continued to rise even after thimerosal was removed from US childhood vaccines in 2001. A review by the IOM of over 200 studies concluded that there was no causal link between thimerosal-containing vaccines and autism. Other studies have found that autism is no more common among vaccinated than unvaccinated children.
- 8) **EXEMPTIONS TO VACCINE REQUIREMENTS.** There are currently three types of exemptions to the requirement that children be vaccinated before entering school: medical; religious; and, philosophical.
 - a) A medical exemption letter can be written by a licensed physician that believes that vaccination is not safe for the medical conditions of the patient, such as those whose immune systems are compromised, who are allergic to vaccines, are ill at the time of vaccination, or have other medical contraindications to vaccines for that individual patient. Every state allows medical exemptions from school vaccination requirements. This determination is entirely up to the professional clinical judgment of the physician. There are no required medical criteria for diagnosing circumstances that contraindicate vaccination. A physician must base that decision on their professional judgment and the standard of practice for their field. According to the Medical Board of California, the "standard of care" (or "standard of practice") for general practitioners is defined as that level of skill, knowledge and care in diagnosis and treatment ordinarily possessed and exercised by other reasonably careful and prudent physicians in the same or similar circumstances at the time in question. Specialists are held to the standard of skill, knowledge and care ordinarily possessed and exercised by other reasonably careful and prudent specialist in the same or similar circumstances.
 - b) Religious exemptions allow parents to exempt their children from vaccination if it contradicts their sincere religious beliefs. Many states allow religious exemptions from

school vaccination requirements, although states interpret the enforcement of them differently. In some states, a parent may simply attest that vaccinations are against their religious beliefs, while in other states the parent must show membership in a church, and that the church's official policy is opposed to vaccination. According to the National Conference of State Legislatures (NCSL), as of June 2014, 48 states allow religious exemptions (all but Mississippi and West Virginia).

- c) Philosophical exemption, which is defined differently in different states, generally means that the statutory language does not restrict the exemption to purely religious or spiritual beliefs. For example, Maine allows restrictions based on "moral, philosophical or other personal beliefs," and California allows objections based on simply the parent(s) beliefs. According to NCSL, 20 states (Arizona, California, Colorado, Idaho, Louisiana, Maine, Michigan, Minnesota, Missouri (limited to childcare enrollees), New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin) permit philosophic exemptions.

As of February, several state legislatures had introduced bills that would address non-medical exemptions. In addition to California, legislators in Oregon, Vermont, and Washington proposed to remove philosophical/personal belief exemption this year. The bills were tabled in Oregon and Washington. On May 25, 2015, the Governor of Vermont signed legislation removing philosophical exemptions, but not religious ones, in that state.

- 9) **SPECIAL EDUCATION.** Pursuant to the federal Individuals with Disabilities Education Act (IDEA), children with disabilities are guaranteed the right to a free, appropriate public education, including necessary services for a child to benefit from his or her education. Between 1976 and 1984, to meet this federal mandate, California schools provided mental health services to special education students who needed the services pursuant to an Individualized Education Program (IEP). An IEP is a legally binding document that determines what special education services a child will receive and why. IEPs include a child's classification, placement, specialized services, academic and behavioral goals, a behavior plan if needed, percentage of time in regular education, and progress reports from teachers and therapists. A child may require any related services in order to benefit from special education, including (but not limited to): speech-language pathology and audiology services, early identification and assessment of disabilities in children, medical services, physical and occupational therapy, orientation and mobility services; and psychological services.

According to the California Department of Education (CDE), over 700,000, or approximately 11% of, California students received Special Education services in the 2013-14 academic year.

- 10) **INDEPENDENT STUDY.** April 22, 2015 amendments to this bill exclude pupils who are enrolled in an independent study program from the immunization requirements of the bill. Independent study is an optional educational alternative, available to students from kindergarten through high school that is meant to respond to the student's specific educational needs, interests, aptitudes, and abilities. Independent study is an alternative to classroom instruction consistent with a school district's regular course of study and is expected to be equal or superior in quality to classroom instruction. Each school district can develop Independent Study options in its own way. Parents and students may also develop

alternative forms of independent study and propose them to the school board. The options are based on the kinds of students being served. The following are some of the ways in which independent study is organized:

- a) School-within-a-school;
- b) District or county alternative in a community location;
- c) School-based independent study offered part-time and full-time;
- d) Countywide home-based independent study offered by the county superintendent of schools;
- e) District dropout prevention centers at selected community sites;
- f) Curricular enrichment options offered to high school students with special abilities and interests, scheduling problems, or individual needs that cannot be met in the regular program;
- g) Alternative school-based independent study, on-or off-site; and,
- h) Some combination of the above.

Independent study can be operated on a traditional school calendar, with a summer school option for eligible students, or on a year-round calendar within a year-round school. Students must have the option of a classroom setting for a full program at the time independent study is made available. This option must be continuously available the student decide to transfer from independent study. The classroom setting option can be offered by the county office of education if the district and county have a formal agreement that has the effect of providing the student with a program that is equivalent to what is offered in the school of residence.

- a) **Seat Time / Average Daily Attendance.** Participation in independent study must be voluntary. For students participating in independent study, a contractual agreement is drawn among the certificated teacher, the student, and his or her parent, guardian, or caregiver. Attendance records are based on a student's work within the terms and conditions of his or her written agreement and not on traditional "seat-time." In independent study, the student's performance, measured by the terms in the agreement, is converted by the supervising teacher into school days. The computed school days are reported as if the student were physically in attendance.
- b) **Legal Enrollment Restrictions.** California education law mandates the following for the administration of independent study programs:
 - i) No pupil shall be required to participate in independent study;
 - ii) Not more than 10% of the students enrolled in an opportunity school or program, or a continuation high school, shall be eligible for independent study. A student who is pregnant or is a parent and primary caregiver for one or more of his or her children shall not be counted within the 10% cap;
 - iii) No individual with exceptional needs may participate in independent study unless his or her IEP specifically provides for that participation; and,
 - iv) No temporarily disabled pupil may receive individual instruction. However, if the temporarily disabled pupil's parents and the district(s) agree, the pupil may receive instruction through independent study instead of the "home and hospital" instruction.
- c) **Enrollment History.** According to CDE, in 2013-14 there were approximately 122,000 independent study students reported by charter schools and 34,000 reported by school

districts. Independent study enrollment was not collected for the 2009–10 and 2010–11 school years. In October 2008, data collected from schools reported that 128,000 students in kindergarten through grade twelve were enrolled in independent study.

- 11) LEGAL CONSIDERATIONS.** Courts have determined that the family itself is not beyond regulation in the public interest and neither rights of religion nor rights of parenthood are beyond limitation. As discussed at length in the Senate Judiciary Committee analysis, extensive case law establishes that the police powers of the state may restrict the parent's control in many ways, such as requiring school attendance and regulating or prohibiting the child's labor. This authority is not nullified because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, a parent cannot claim freedom from compulsory vaccination for their 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. For a further discussion of the legal rights and ramifications of this bill, please see the Senate Judiciary Committee Analysis as published on April 28, 2015.
- 12) SUPPORT.** The Superintendent of Public Instruction (SPI), Tom Torlakson, supports this bill, stating that school and child care immunization requirements have proven effective in increasing immunization rates, limiting the spread of disease, and providing an overall public health benefit. He further states that California has seen a dramatic increase in the PBE rate for students entering kindergarten over the past fifteen years, placing other children, and the overall public health of our citizens, at risk of illness or death from preventable diseases. The SPI concludes that education is a fundamental right in California, and this bill provides education choices for families opting not to vaccinate their children.

The California Medical Association, a cosponsor of this bill, states that in 2000, the CDC determined that measles had been eradicated in the U.S. However, since December 2014, California has had 136 confirmed cases of measles across fourteen counties. Almost 20% 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. The California Immunization Coalition, writing in support of this bill, notes that in the 2013-14 school year more than 16,800 kindergarteners in California started school with either no vaccinations or only some of their required vaccinations because their parent had chosen to exempt them from vaccinations, representing a 25% increase over the previous two school years.

March of Dimes Foundation and the Medical Oncology Association of Southern California, Inc. state that public participation in immunization programs is critical to their effectiveness. Protection is greatly affected by rates of immunization: the more people immunized, the less the risk of exposure to, and illness from, vaccine-preventable infections.

The Medical Board of California states that vaccines have been scientifically proven to be effective in preventing illnesses. Ensuring that children receive the ACIP recommended vaccination schedule is the standard of care, unless there is a medical reason that the child should not receive the vaccine; this bill would still allow for a medical exemption to address these concerns. The Children's Specialty Care Coalition notes that high vaccine coverage, particularly at the community level, is extremely important for people who cannot be vaccinated, including people who have medical contraindications to vaccinations and those

who are too young to be vaccinated. Protecting the individual and the community from communicable diseases such as measles, mumps, and pertussis, is important to the public's health.

The Committee notes it has received hundreds of letters in support of this bill. Many letters from individuals in support write to raise similar points regarding reductions in vaccination rates for school children, recent dangerous measles and pertussis outbreaks, concerns for the health of children and medically fragile individuals, and concerns for the safety of communities at large.

- 13) OPPOSITION.** Opponents state that this bill is an extreme measure that is not necessary at this time. The California Chiropractic Association states that this bill proffers the notion that health officials will be given the power to nullify the doctor-patient relationship, and veto the judgment of any physician who questions the status quo and believes that a patient should not receive a particular vaccine. A Voice for Choice states that the Legislature should look to alternative approaches that will stop the transmission of disease and continue to allow parents to work with their doctors for the best vaccination schedule for their individual children, and allow their children their constitutional right to a free and public education.

The Committee also notes that it received hundreds of letters in opposition to this bill. A letter from Our Kids Our Choice and many other similar letters argue 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 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 "vaccination rates of California schoolchildren are high at 98.64%" and cite the success of recent legislation, AB 2109 (Pan), Chapter 821, Statutes of 2012, which they say has resulted in a 19% decrease in exemptions amongst kindergarteners in just one year. They argue the public health concerns are already adequately addressed with current California laws. Many letters from individuals write to raise relatively similar points regarding various constitutional rights, informed consent, vaccine safety/injuries, absence of a health crisis, lack of educational choice, difficulty in obtaining medical exemptions, and the like.

ParentalRights.Org states that "...while 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."

- 14) CONCERNS.** American Civil Liberties Union of California (ACLU-CA) states that "while we appreciate that vaccination against childhood diseases is a prudent step that should be promoted for the general welfare, we do 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." ACLU-CA

further states that unlike other states where a vaccination mandate may be more permissible, public education is a fundamental right under the California Constitution. 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." The California Association of Private School Organizations states that that association has taken no formal position on the measure, and does not oppose the elimination of the PBEs, they are concerned about the increased administrative burden to which schools will be subjected should this bill become law. The association urges amendments that would create a phase-in period, lengthen the time horizon for compliance as per the existing regulations, or enact such other provisions as may produce a combination of increased compliance and a decreased possibility of mandatory exclusion.

15) RELATED LEGISLATION. SB 792 (Mendoza) prohibits 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. SB 792 was approved by the Senate on May 22, 2015 by a vote of 34-3 and is currently pending committee referral in the Assembly.

16) PREVIOUS LEGISLATION.

- a) AB 2109 requires, on and after January 1, 2014, a separate form prescribed by DPH to accompany a letter or affidavit to exempt a child from immunization requirements under existing law on the basis that an immunization is contrary to beliefs of the child's parent or guardian. Required the form to include:
 - i) A signed attestation from the 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.
 - ii) 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 i) above.

The Governor included a message with his signature on this bill, which stated, in part: "I will direct (DPH) to allow for a separate religious exemption on the form. In this way, people whose religious beliefs preclude vaccinations will not be required to seek a health care practitioner's signature."

- b) SB 614 (Kehoe, Chapter 123, Statutes of 2011) allows a pupil in grades seven through 12, to conditionally attend school for up to 30 calendar days beyond the pupil's first day of attendance, if that pupil has not been fully immunized with all pertussis boosters appropriate for the pupil's age if specified conditions are met.
- c) AB 354 (Arambula, Chapter 434, Statutes of 2010) allowed DPH to update vaccination requirements for children entering schools and child care facilities and added the

American Academy of Family Physicians to the list of entities whose recommendations DPH must consider when updating the list of required vaccinations. Requires children entering grades seven through 12 receive a TDaP booster prior to admittance to school.

- d) SB 1179 (Aanestad, 2008) would have deleted DPH's authority to add diseases to the list of those requiring immunizations prior to entry to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center. SB 1179 died in Senate Health Committee.

17) POLICY COMMENTS.

- a) **Collecting complete data will provide an accurate picture of partial vaccination rates throughout the state.** To date, we do not have an exact picture of the vaccination status of every student in California. For the 2014-15 school year, less than 95% of schools reported their vaccination numbers to DPH. Of the schools reporting, DPH found that 90.4% of enrolled kindergarteners had received the complete vaccination schedule. Additionally 6.9% of students were conditionally enrolled because they were lacking some immunizations, and were in the process of completing the required vaccination schedule. For the 2014-15 school year, DPH calculated individual antigen vaccination status (such as DTP, Polio, MMR, etc) based only on the number of fully vaccinated students and vaccinations completed by conditionally enrolled students. DPH did not include in this calculation the individual antigen status for partially vaccinated students with PBEs. Therefore, it is likely that individual antigen immunization coverage may be underestimated. Anecdotal evidence suggests that some percentage of students have some, but not all, required immunizations.

DPH is currently developing new regulations that will implement complete data collection for partially vaccinated students holding PBEs and medical exemptions. This will ensure that reported data are a more accurate reflection of the vaccination rate for each immunization.

- b) **Identification of partially and non-vaccinated students.** Current law requires that parents filing a PBE must provide the school with documentation for "which immunizations have been given and which immunizations have not been given on the basis that they are contrary to his or her beliefs" for the purposes of immediate identification in case of disease outbreak in the community. As drafted, this requirement would be deleted by SB 277. If SB 277 is enacted, schools will still need to know which specific immunizations have or have not been received by all students, including those that are enrolled in independent study. The author may wish to take an amendment to clarify that schools will collect information for all enrolled students, regardless of immunization status.

18) SUGGESTED AMENDMENTS.

- a) **A physician's professional judgment.** As previously discussed, it is entirely within the professional judgment of a physician to determine if vaccination is not recommended due to the medical history of the patient. Opponents of this bill have raised concerns that current law regarding the letter of medical exemption does not adequately make clear that

the letter may be written based on the best medical judgment of the physician. To that end, the author may wish to consider amending this bill.

Section 120370. (a) If the 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~~ *for which the physician does not recommend* immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician's statement.

- b) **Implementation clarification clause.** As discussed in the Senate Judiciary Committee analysis, clarification is needed to address the status of students currently enrolled with an existing PBE upon the operative date of this bill.

Section 120335 (g) The governing authority shall allow continued enrollment to pupils who, prior to January 1, 2016, have a letter or affidavit on file in that institution stating beliefs opposed to immunization. On and after July 1, 2016, the governing authority shall not unconditionally admit to that institution for the first time or admit or advance any pupil to the 7th grade level unless the pupil has been immunized as required by this section.

- c) **Special education students must have access to services.** As previously discussed, under federal and state law disabled children are guaranteed the right to a free, appropriate public education, including necessary services for a child to benefit from his or her education. An amendment should be taken to clarify that students with an IEP will still have access to special education related services as directed by their IEP.

Section 120335 (h) Nothing in this section shall prohibit a pupil that qualifies for an individualized education program, pursuant to federal law and Section 56026 of the Education Code, from accessing any special education and related services required by their individualized education program.

- d) **Independent study programs are highly variable.** As previously discussed, students enrolled in an independent study program are excluded from the provisions of this bill requiring them to be vaccinated. Independent study courses take many forms and in many places, including both on and off school sites. As currently drafted, there is nothing differentiating classroom based versus non-classroom based independent study instruction. An amendment should be taken to specify that students enrolled in off-campus independent study are not subject to vaccination requirements.

Section 120335 (f): This section does not apply to a pupil in 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 *and does not receive classroom-based instruction.*

REGISTERED SUPPORT / OPPOSITION:

Support

California Immunization Coalition (cosponsor)
California Medical Association (cosponsor)
Vaccinate California (cosponsor)
Dave Jones, California Insurance
Commissioner
Katie Rice, Supervisor, Marin County
Sheila Kuehl, Los Angeles County Supervisor
and former State Senator
Tom Torlakson, California Superintendent of
Public Instruction
AIDS Healthcare Foundation
Alameda County Board of Supervisors
Albany Unified School District
American Academy of Pediatrics - California
American College of Emergency Physicians
California Chapter
American Federation of State, County and
Municipal Employees, AFL-CIO
American Lung Association
American Nurses Association\California
Association of California School
Administrators
Association of Northern California Oncologists
BIOCOM
California Academy of Family Physicians
California Academy of Physician Assistants
California Association for Nurse Practitioners
California Association of Physician Groups
California Black Health Network
California Children's Hospital Association
California Coverage and Health Initiatives
California Department of Insurance
California Disability Rights, Inc.
California Healthcare Institute
California Hepatitis Alliance
California Hospital Association
California Immunization Coalition
California Optometric Association
California Pharmacists Association
California Primary Care Association
California Public Health Association-North
California School Boards Association
California School Employees Association
California School Nurses Organization
California State Association of Counties
California State PTA
Carlsbad High School Parent-Teacher-Student
Association
Child Care Law Center
Children Now
Children's Defense Fund California
Children's Healthcare Is a Legal Duty, Inc.
Children's Hospital Oakland
Children's Specialty Care Coalition
City and County of San Francisco Board of
Supervisors
City of Berkeley
City of Beverly Hills
City of Pasadena
Contra Costa County
County Health Executives Association of
California
County of Marin
County of Tehachapi
Democratic Women's Club of Santa Cruz
County
Donate Life California
First 5 California
Foundation for Pediatric Health
Gilroy Unified School District
Health Officers Association of California
Jay Hansen, Sacramento County School Board
Member
Junior Leagues of California
Kaiser Permanente
Los Angeles Community College District
Los Angeles County Board of Supervisors
Los Angeles County Supervisor Sheila Kuehl
Los Angeles Unified School District
March of Dimes California Chapter
Medical Board of California
Medical Oncology Association of Southern
California
MemorialCare Health System Physician
Society
National Coalition of 100 Black Women
Sacramento Chapter
Osteopathic Physicians and Surgeons of
California
Pasadena Public Health Department
Project Inform
Providence Health and Services, Southern
California

Reed Union School District
San Dieguito Union High School District
San Francisco Democratic County Central
Committee
San Francisco Unified School District
Santa Clara County Board of Supervisors
Santa Cruz County
Santa Cruz County Democratic Party
Santa Monica Malibu Union Unified School
District
School for Integrated Academics and
Technologies, California
Secular Coalition for California
Silicon Valley Leadership Group
Solano Beach School District
Sonoma County Board of Supervisors

The Children's Partnership
UAW Local 5810, University of California
Postdoctoral Researchers
University of California Hastings College of
the Law
University of California, Irvine Center for
Virus Research
University of California, Irvine School of
Medicine
Yolo County Board of Supervisors
Numerous Medical Doctors
Numerous Osteopathic Doctors
Numerous health care professionals, including
RNs, PAs and NPs
Hundreds of individuals

Opposition

A Voice for Choice
Alliance of California Autism Organizations
Association of American Physicians and
Surgeons (Tucson, AZ)
APLUS+ Network Association
Autism Society
AWAKE California
California Chiropractic Association
California Coalition for Health Choice
California Naturopathic Doctors Association
California Nurses for Ethical Standards
California Nurses for Ethical Standards
California ProLife Council
California Right to Life Committee, Inc.
Canary Party
Capitol Resource Institute
Educate. Advocate.
Educate. Advocate.
Faith and Public Policy
Families for Early Autism Treatment
Foundation for Pediatric Health
Gold Mine Natural Food Co.

Homeschool Association of California
HSC Homeschool Association of California
National Autism Association California
National Vaccine Information Center
Our Kids, Our Choice
Pacific Justice Institute
Pacific Justice Institute Center for Public
Policy
ParentalRights.Org
Pediatric Alternatives
SafeMinds
Saint Andrew Orthodox Christian Church
Standing Tall Chiropractic: A Creating
Wellness Center
Unblind My Mind
Vaccine Choice Canada (Winlaw, British
Columbia)
Vaccine-Injury Awareness League
Weston A. Price Foundation
Numerous Chiropractors
Numerous Medical and Osteopathic Doctors
Hundreds of individuals

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