

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

SB 357 (Portantino) – As Amended April 27, 2023

SENATE VOTE: 39-0

SUBJECT: Vehicles: physician and surgeon reporting

SUMMARY: Permits, instead of requires, a physician and surgeon to immediately report to the Department of Motor Vehicles (DMV) in writing, the name, date of birth, and address of every patient at least 15 years of age or older, or 14 years of age if the patient has a junior permit, whom the physician and surgeon has diagnosed as having a physical or mental disability, disease or disorder that could affect the safe operation of a motor vehicle, if a physician and surgeon reasonably and in good faith believes that reporting the patient will serve the public interest. Specifically, **this bill:**

- 1) Requires DMV, in cooperation with the State Department of Public Health (CDPH), to consult with professional medical organizations whose members have specific expertise in the diagnosis and treatment of those physical and mental disabilities, diseases, or disorders that could affect the safe operation of a motor vehicle as well as, the definitions of functional severity to guide reporting so that diagnosed cases reported are only those where there is a reason to believe the patients' conditions are likely to impair their ability to operate a motor vehicle.
- 2) Provides that a health care provider or health care entity is not subject to civil, criminal, administrative, licensing, disciplinary employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for making or not making, or in relation to or arising from making or not making, a report authorized by this section.
- 3) Requires DMV to submit a report to the Legislature evaluating the impact of transitioning to a discretionary reporting system for medical conditions. The report shall include a comparison of the number of reports submitted by physicians and surgeons to DMV and the types of conditions reported before and after the transition. The report shall also include an analysis of the crash rates of individuals reported under the discretionary reporting system.
- 4) Sunsets the above provision on January 1, 2029 and reverts back to existing law mandating reporting.
- 5) Permanently removes the provisions of code authorizing DMV to refuse to issue or renew a driver's license for a person who has a lapse of consciousness or who has experienced, within the last three years, either a lapse of consciousness or an episode of marked confusion caused by any condition which may bring about recurrent lapses while maintaining the authority to refuse to issue or renew a license for any physical or mental disability that could affect the safe operation of a motor vehicle.
- 6) Provides that physician reports made pursuant to this law are not subject to disclosure.

EXISTING LAW:

- 1) Requires physicians and surgeons to report immediately to the local health officer, who will then report to the DMV, the name, date of birth, and address of any patient at least 14 years or older diagnosed with a disorder characterized by lapses of consciousness. These reports shall be kept confidential and used solely by the DMV for determining eligibility for operating motor vehicles. (Health and Safety Code Section (HSC) 103900)
- 2) Exempts physicians and surgeons from this requirement if: (17 CCR 2812)
 - a) The patient's sensory motor functions are impaired to the extent that the patient is unable to ever operate a motor vehicle;
 - b) The patient states that they do not drive, never intend to drive, and the physician or surgeon believes them;
 - c) The physician or surgeon previously reported the diagnosis and believes the patient has not operated a motor vehicle; and,
 - d) There is documentation in the patient's medical record that another physician or surgeon reported the diagnosis and the current physician or surgeon believes the patient has not operated a motor vehicle.
- 3) Authorizes a physician or surgeon, if they believe that the reporting of a patient will serve the public interest, to similarly report a patient even if their condition is not characterized by lapses of consciousness. (HSC 103900)
- 4) Directs CDPH, in consultation with the DMV and professional medical organizations, to define disorders characterized by lapses of consciousness and definitions of functional severity to guide reporting so that only diagnosed cases where there is reason to believe the condition is likely to impair the ability to operate a motor vehicle are reported. (HSC 103900)
- 5) Exempts health records reported as part of this reporting from public records disclosures. (Government Code Section 7930.180)
- 6) Authorizes the DMV, upon reexamination of a person's qualifications to operate a motor vehicle, to restrict, make subject to terms and conditions of probation, suspend, or revoke the driving privilege of that person. (Vehicle Code Section (VEH) 12818)
- 7) Requires the DMV to provide notice and an opportunity to be heard whenever they restrict, make subject to the terms of conditions of probation, suspend, or revoke a person's driving privilege. (VEH 13950-13954)
- 8) Gives drivers the right to request a hearing within 10 days after they receive notice of the order of driver's license suspension or revocation if the decision is based on a documented medical condition or disability. (VEH 14100)

FISCAL EFFECT:

According to the Senate Appropriations Committee,

- 1) DMV indicates that it would incur unknown significant costs that could exceed \$1 million to make necessary programming changes to build a temporary solution outside of core legacy IT systems for modifying the existing driver's license records relative to loss of consciousness (LOC) and suspensions. Staff notes that DMV is currently undertaking a multi-year Enterprise Modernization Project, the Digital eXperience Project (DXP) that will not be completed until 2025-26. (Motor Vehicle Account)
- 2) DMV estimates annual savings of approximately \$1.5 million until 2028-29 as a result of a predicted reduction in the number of confidential medical condition reports submitted by physicians, and related re-examinations and license suspensions. These savings would offset any moderate costs for DMV to produce the required report that is due on January 1, 2027. (Motor Vehicle Account)
- 3) The CDPH estimates costs of approximately \$158,000 for 0.5 PY of staff time to coordinate with DMV and professional medical organizations to determine the types of conditions that are likely to impair driving abilities. (General Fund)

COMMENTS: Since 1957, California doctors have been required to report to local health officers patients diagnosed with disorders characterized by lapses of consciousness. A few examples of conditions that may, but do not necessarily, constitute a "disorder characterized by lapses of consciousness" are Alzheimer's disease, seizure disorders, narcolepsy, abnormal metabolic states including hypo- and hyperglycemia associated with diabetes, recurrent cardiac arrhythmias and transient ischemic attacks (referred to as "mini-strokes").

Since 1990, doctors have been permitted to report patients whose condition is not categorically required to be reported if the reporting doctor has a reasonable and good faith belief it is in the public interest to report the patient.

According to DMV, last year a total of 34,500 reports were filed with DMV by doctors for their patients having a loss of consciousness event. Of those that were reported, 47% resulted in a license suspension, 23% were placed on medical probation, and no action was taken 30% of the time.

Placing a person on medical probation allows drivers who have experienced a lapse of consciousness to continue driving. Medical Probation Type II are issued if a driver has achieved three to five months of control without lapse of consciousness and requires reports to be issued to DMV by a physician. Medical Probation Type III is for drivers who have achieved six or more months of control, but due to contributing factors there is still a slight possibility of another seizure. Type III requires the driver to make reports to DMV on their status.

Five states (California, Delaware, Nevada, New Jersey, Oregon, and Pennsylvania) have mandatory reporting requirements for physicians to report to their DMVs if a patient has experienced a loss of consciousness event or has epilepsy. Half of states in the country

encourage, but do not require, physicians to report medical conditions that result in a loss of consciousness to DMV.

According to the author, “By refining the circumstances under which physicians are required to report patients who experience a lapse of consciousness, SB 357 provides a balance between public safety and physician-patient confidentiality. Existing mandatory reporting of patients who experience lapses of consciousness can adversely affect the long-held confidential nature of the physician-patient relationship. Further, the potential disclosure of sensitive information can cause patients to be less forthcoming to physicians, which may result in inaccurate or inadequate diagnosis and treatment of the condition. Also, there are many individuals who suffer only a single episode of a lapse of consciousness or who have a condition that is easily controlled who do not pose a threat to public safety.”

According to a 2003 study from the American Academy of Neurology, California’s requirement for mandatory reporting for doctors to report lapse of consciousness has resulted in patients withholding information from their doctors, which may have adverse health impacts. A survey of individuals with epilepsy in the state found that 16% of those in the community with epilepsy who have never had their license suspended withheld information from their doctors. 50% of those who had seen a suspension refused to disclose the loss of consciousness to their doctors in future visits. The survey also found that 39% of patients had been in a crash, with 26% of those patients, or 10% of all respondents, believing the crash occurred because of a seizure.

In 2008, the Legislature passed SB 1394 (Lowenthal) which was nearly identical to this bill. That bill was vetoed by Governor Schwarzenegger. In his veto message, the Governor argued:

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

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

DMV has conducted multiple studies related to higher crash risks of individuals with epilepsy. *Crash Risks of Drivers with Physical and Mental (P&M) Conditions and Changes in Crash Rates Over Time*, published in 2017 noted that individuals with medical conditions known to affect driving ability are at higher risk of crashing relative to the general population of California drivers. Drivers with epilepsy, syncope, dementia/ Alzheimer’s disease, diabetes, and sleep disorders have the highest rate of referrals to the Driver Safety Branch.

According to the results of the report, “The mean crash rate for the prior two years for each of the six P&M groups (16 to 49 crashes per 100 drivers) was higher than both the general population of drivers (seven crashes per 100 drivers) and the males under 25 group (10 crashes per 100 drivers). However, although still higher than the general population of drivers, there was a drop in the mean crash rates for drivers with a P&M designation of drug addiction, lapses of consciousness, and mental condition relative to what the crash rates for each of the groups were in prior DMV studies. When sex and age were taken into account, the likelihood of a crash

occurring in each of the P&M groups increased as compared to prior studies relative to the general population of drivers.

One interesting observation was that the number of individuals Driver Safety identified as needing additional monitoring as a result of a medical condition dropped dramatically between 1999 and 2007. Specifically, in 1999, 68% of P&M hearings resulted in additional monitoring, driving restrictions, suspension, or revocation. By 2007, this number had dropped to 24%.”

The study further indicated that is possible the study is an overestimation of the crash risk for drivers with P&M conditions due to doctors not filing reports to DMV despite being required to under law. Further, it noted that previous research has found that crash rates of drivers with epilepsy may not be higher than the general population of drivers. Nonetheless, DMV’s study concluded that drivers with a lapse of consciousness designation were almost three times more likely to crash relative to the general population of drivers. The researchers note that the increase may be result of the inclusion of individuals with syncope, which prior research has shown is associated with an increase in crash rates.

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

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

Since the 2017 DMV study using 2007 data was published, medication for those with epilepsy has improved. As of 2022, there are more than 30 medications approved by the FDA for treatment of seizures, nearly half of which were approved since 2008.

Double Referral: This bill is double referred to Assembly Judiciary Committee, which may evaluate the provisions of the bill providing a liability shield to doctors for reporting or failing to report patients to DMV for a loss of consciousness event.

Previous Legislation:

SB 1394 (Lowenthal of 2008) would have eliminated, with few exceptions, the mandatory requirement that Californian physicians report to the DMV every patient whom they diagnose with a condition characterized by LOC. This bill was vetoed by Governor Schwarzenegger.

AB 2547 (Lowenthal of 2004) and SB 212 (Lowenthal of 2005) would have modified reporting requirements for physicians diagnosing or treating conditions that might impair a licensee's ability to drive. AB 2547 died in the Senate Judiciary Committee. SB 212 was vetoed by the Governor

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Neurology
American Epilepsy Society
California Academy of Family Physicians
California Medical Association
California Neurology Society
California Teamsters Public Affairs Council
Epilepsy Foundation Los Angeles
Epilepsy Foundation of America
Health Officers Association of California

Opposition

None on file

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