

REQUIRES PRIVATE-SECTOR EMERGENCY AMBULANCE EMPLOYEES TO REMAIN ON-CALL DURING WORK BREAKS. ELIMINATES CERTAIN EMPLOYER LIABILITY. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on the Secretary of State's website at <http://voterguide.sos.ca.gov>

- Makes labor law entitling hourly employees to take work breaks for meals and rest, without being on-call, inapplicable to private-sector emergency ambulance employees. Regulates timing of meal breaks for these employees.
- Eliminates employers' liability—in actions pending on or after October 25, 2017—for violations of existing law regarding work breaks. Requires employers to provide training regarding certain emergency incidents, violence prevention, and mental health and wellness.
- Requires employers to provide employees certain mental-health services.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Likely fiscal benefit to local governments (in the form of lower costs and higher revenues), potentially in the tens of millions of dollars each year.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

911 EMERGENCY MEDICAL TRANSPORTATION

Ambulances Provide Emergency Medical Care and Transportation. When a 911 call is made for medical help, an ambulance crew is sent to the location. (Typically, a local fire department vehicle is also sent.) At the scene, the crew provides medical treatment to the patient. If needed, the crew drives the patient to the nearest hospital. (Ambulances also provide nonemergency rides to hospitals or doctors' offices when a patient needs treatment or testing.)

Private Companies Operate Most Ambulances. Private companies own and operate most ambulances in California. They provide about 75 percent of all emergency ambulance rides. In the other 25 percent of cases, the local fire department has its own ambulances and drives patients to the hospital themselves.

Most Ambulance Trips Are Paid for by Health Insurance. State law requires ambulances to transport all patients, even patients who have no health insurance and cannot pay. In most cases, however, insurance pays for ambulance trips. More than two-thirds of ambulance trips are for patients with government insurance, such as Medicare and Medicaid (known as Medi-Cal in California). About 20 percent of trips are for patients with commercial health insurance, typically insurance people get through their job. The other trips are for patients with no insurance.

Commercial Insurance Pays More for Ambulance Trips Than Government Insurance Pays. The average cost of an ambulance trip in California is about \$750. Medicare and Medi-Cal pay ambulance companies a fixed amount for each trip. Medicare pays about \$450 per trip and Medi-Cal pays about \$100 per trip. As a result, ambulance companies lose money transporting Medicare and Medi-Cal patients. Ambulance companies also lose money when they transport patients with no insurance. This is because these patients typically cannot pay for these trips. To make up for these losses, ambulance companies bill patients with commercial insurance more than the average cost of an ambulance trip. On average, commercial insurers pay \$1,800 per trip, more than double the cost of a typical ambulance ride.

THE EMERGENCY AMBULANCE INDUSTRY

Counties Select Main Ambulance Providers. County agencies divide the county into several zones. The ambulance company that is chosen to serve each zone has the exclusive right to respond to all emergency calls in that area. The company generates revenue by collecting payments from patients' insurers. In exchange, the ambulance company pays the county for the right to provide ambulance trips in that area. The county typically chooses the ambulance company through a competitive bidding process. Ambulance companies bid by offering a competitive service—for instance, responding to most 911 calls within a certain amount of time—and a competitive

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payment to the county. The county picks the best offer and signs a multiyear contract with that company.

Local Ambulance Contracts Reflect Industry Costs in That Area. Ambulance companies propose response time agreements and payment levels to the county that would be profitable for their business. In developing bids, they calculate how much it would cost to provide ambulance services in the area and how much revenue they would generate. This, in turn, would depend on the mix of insurance types in the area. A high share of patients with private insurance means they can expect to generate more revenue. A high share of government-insured and uninsured patients means they would generate less revenue.

To Respond Quickly, Most Ambulances Are Not Stationed at Permanent Locations. Unlike fire department crews, who wait for emergency calls at their permanent location, most ambulance crews are positioned throughout a city or region to anticipate 911 calls. After a 911 call arrives and the nearest ambulance responds, other ambulance crews in the area reposition to cover the area again for the next 911 call. This practice—known as “posting”—lets the ambulance provider meet the response time requirements in its contract while using fewer ambulance crews than would be needed if they were stationed at permanent locations, resulting in lower overall costs.

EMTs AND PARAMEDICS

California’s Ambulance EMTs and Paramedics. There are 17,000 emergency medical technicians (EMTs) and paramedics in California and about 3,600 ambulances. EMTs provide first aid and basic medical care. Paramedics provide advanced medical care. Ambulances have two crew members—two EMTs, an EMT and a paramedic, or two paramedics. Ambulance crews normally work 12-hour shifts.

Some EMTs and Paramedics Receive Mental Health Services. Emergency response personnel—such as police officers, firefighters, EMTs, and paramedics—often experience traumatic events during work. These include work-related injuries, natural disasters, terrorism, or accidents involving children. As a result, people in these jobs have higher rates of post-traumatic stress disorder (PTSD), depression, and suicide than the general public. Many ambulance employers

offer counseling for staff who have experienced a traumatic event. Some employers also provide wellness education and mental health service plans.

Some EMTs and Paramedics Receive Additional Training. State officials, in coordination with private ambulance companies, oversee training to help EMTs and paramedics respond to natural disasters, situations involving active gunfire, and acts of terrorism. These circumstances require special responses—such as removing injured patients from dangerous areas—not included as part of standard EMT or paramedic training.

MEAL AND REST BREAKS FOR EMTS AND PARAMEDICS

Employers Must Follow State Labor Laws About Meal and Rest Breaks. California employers must follow various labor laws, including rules about the state minimum wage, how many hours can be worked, health and safety in the workplace, and meal and rest breaks. Most employers must provide an unpaid 30-minute meal break during each work shift and a paid 10-minute rest break every four hours.

Meal and Rest Breaks Taken by EMTs and Paramedics. In practice, EMTs and paramedics are “on call” for their entire work shift in case they receive an emergency call. This means that their breaks are sometimes interrupted by 911 calls. They can also be interrupted by a request to reposition to a new posting location. As a result, EMTs and paramedics are often unable to plan their meal and rest breaks. At the same time, most ambulance shifts include down time between emergency calls. (Urban areas tend to have less down time than rural areas do.) As a result, crews often have enough down time in their shift to take uninterrupted meal and rest breaks even though they are technically on call.

Recent Court Decision Likely Requires “Off-Duty” Breaks for EMTs and Paramedics. In 2016, the California Supreme Court ruled that on-call breaks violate state labor law. Instead, employers must provide breaks that are off-duty and not interruptible, even if an emergency occurs. The decision was *Augustus v. ABM Security Services*. The case involved private security guards whose employer required that they keep their radios on during breaks. The court awarded the company’s security guards payments due to the violations.

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Before the *Augustus* decision was made, EMTs and paramedics had filed several similar lawsuits against private ambulance companies. These lawsuits are still active. Labor laws and industry practices for private security guards are similar to the laws and industry practices for EMTs and paramedics. Due to these similarities, it appears likely that the *Augustus* decision will also apply to EMTs and paramedics in the near future.

Full Compliance With Augustus Decision Would Increase Costs for Ambulance Companies. To follow state law under *Augustus*, ambulance crews would have to go off-duty during their meal and rest breaks. As a result, in order to meet the terms of their existing contracts, ambulance companies would likely have to operate significantly more ambulances in each area than they do now. This would increase costs to ambulance companies—potentially by more than \$100 million each year statewide.

Ambulance Industry Response to Augustus Decision. To address higher costs and still remain profitable, companies would need to raise revenue and/or reduce costs. In response to the *Augustus* decision, ambulance companies could:

- **Negotiate Legal Agreements That Allow Partial Compliance.** In some cases, ambulance companies and EMTs and paramedics could agree to a meal and rest break compromise that is less costly for ambulance companies than providing off-duty breaks. Potential agreements such as these would be a compromise between current industry practice and full compliance with *Augustus*, with costs lower than fully complying with *Augustus*.
- **Increase Insurance Charges.** Ambulance companies could charge commercial insurance companies more for their patients' trips. If commercial insurers agreed to pay these higher rates, this would likely increase health insurance premiums for people with commercial health insurance. As noted earlier, ambulance companies already charge insurers much more than the average cost for an ambulance trip. Ambulance companies might be able to generate some additional revenue from insurance companies, but it appears unlikely that the full cost of compliance with the *Augustus* decision could be covered in this way.

- **Reduce Business Costs.** Ambulance companies could change the way they do business to reduce costs. They could, for instance, lengthen their response times for emergency calls or replace higher paid paramedics with EMTs (who are generally paid lower wages). Ambulance companies would need to negotiate these changes with counties. These types of changes would likely be minor and therefore not provide major cost savings.
- **Smaller Contract Payments to Local Governments.** Ambulance companies could pay counties less for the right to provide ambulance services in each area. In areas that are least profitable, ambulance companies might no longer be able to pay for the right to provide ambulance services in that area. In these cases, counties might need to pay ambulance companies to ensure ambulance services remain available in that area.

Much of These New Costs Would Be Paid by Counties. Although increased costs associated with compliance with *Augustus* would be offset by ambulance companies in a variety of ways, as discussed above, it appears likely that much of these higher costs would be borne by counties.

PROPOSAL

This measure makes changes to state laws that affect private-sector EMTs and paramedics. The measure would not apply to EMTs and paramedics who work for public agencies, such as fire departments. The measure is described in more detail below.

Requires On-Call Meal and Rest Breaks for EMTs and Paramedics. The measure requires EMTs and paramedics to stay on call during their whole shift. In effect, the measure continues the industry practice of requiring EMTs and paramedics to remain on call during breaks. At the same time, however, the measure requires that meal breaks (1) not be during the first or last hour of a shift, and (2) be spaced at least two hours apart. The measure requires ambulance companies to operate enough ambulances to meet these meal break schedules.

Seeks to Limit Costs for Past Practice of On-Call Meal and Rest Breaks. The *Augustus* decision suggests

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that the practice of requiring EMTs and paramedics to stay on call during breaks is against the law. Private ambulance companies may now owe penalties for these past violations. Several groups of EMTs and paramedics have sued ambulance companies alleging these violations. These lawsuits are still active. In addition to requiring on-call meal and rest breaks going forward, this measure states that the past industry practice of on-call meal and rest breaks was allowable. This could eliminate costs that ambulance companies may face related to these lawsuits.

Requires Employer-Paid Training and Mental Health Services. The measure requires ambulance companies to offer EMTs and paramedics (1) annual natural disaster, active shooter, and violence prevention training; (2) mental health and wellness education; (3) mental health counseling sessions; and (4) access to long-term mental health services.

FISCAL EFFECTS

As described above, the legal status of labor law requirements on industries such as ambulance services is currently in flux. It appears likely, however, that ambulance companies will be required in the near future to provide off-duty meal and rest breaks. If so, this will have the effect of significantly raising costs of providing ambulance services. These higher costs would affect counties, by reducing ambulance company payments to them and/or by requiring county payments to ambulance companies to ensure adequate service.

Under Proposition 11, however, ambulance companies would avoid most of these new costs, as the measure generally would allow them to continue operating as they have in the past. That is, they could continue to use on-call meal and rest breaks. As a result, Proposition 11 would have the following impacts on ambulance company costs:

- **Lower Net Operating Expenses.** This measure requires EMTs and paramedics to stay on call during breaks. Thus, ambulance companies would not face new ongoing costs—potentially more than \$100 million per year—associated with providing off-duty breaks. At the same time, ambulance companies would need to operate somewhat more ambulances than they do under current practice in order to comply with the measure’s other requirements related

to meal and rest break schedules. This would result in some new costs. On net, these on-call meal and rest break laws would result in lower costs in the high tens of millions of dollars annually for ambulance companies compared to the cost of complying with *Augustus*.

- **Some New Costs to Provide Training and Mental Health Services.** Ambulance companies that do not currently offer the training and mental health services required by this measure would pay new costs to provide them. These benefits would likely cost ambulance companies several million dollars each year.
- **Potential Avoidance of One-Time Costs.** Proposition 11 seeks to limit costs that ambulance companies might face as a result of active lawsuits regarding meal and rest break violations. (The companies could owe payments to workers due to these violations.) Whether the measure limits these costs would likely be determined by the courts. If the measure does eliminate these costs, ambulance companies would avoid unknown, but potentially large, one-time costs.

Fiscal Benefit to Local Governments Due to Lower Net Ambulance Costs. Due to lower net ambulance company costs, this measure would result in fiscal benefits to local governments (in the form of lower costs and higher revenues), potentially in the tens of millions of dollars each year. This is because ambulance companies would avoid increased costs associated with providing off-duty meal and rest breaks. A portion of these benefits would go to insurance companies, but most would go to local governments.

Visit <http://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/2018-ballot-measure-contribution-totals/> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-18-gen.html> to access the committee’s top 10 contributors.

If you desire a copy of the full text of the state measure, please call the Secretary of State at (800) 345-VOTE (8683) or you can email vigfeedback@sos.ca.gov and a copy will be mailed at no cost to you.