

AMENDED IN SENATE JUNE 6, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 632**

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**Introduced by Assembly Member Salas**

February 21, 2007

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An act to amend Section 1278.5 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 632, as amended, Salas. Health care facilities: whistleblower protections.

Existing law provides for the licensure and regulation of health care facilities, as defined, by the State Department of Public Health. Under existing law, a health facility is prohibited from retaliating or discriminating against an employee of a health facility that has presented or initiated a complaint or initiated, participated, or cooperated in an investigation or proceeding of a government entity relating to the care, services, or conditions of the facility. Existing law makes the violation of these provisions a crime and subject to the assessment of a civil penalty.

This bill would ~~additionally~~ prohibit a health facility, from *discriminating or retaliating or discriminating* against *any patient, employee, a physician and surgeon on its member of the facility's medical staff, or any other health care worker of the facility* who ~~has complained of the care, services, or conditions of the health facility or assisted, as specified, a governmental agency in the investigation of those matters,~~ and would also prohibit the entity that owns or operates

~~the facility and any other facility owned or operated by that entity from retaliating or discriminating against the physician and surgeon because of taking those actions (1) has presented a grievance, complaint, or report to an entity or agency responsible for accrediting or evaluating the facility or to any other governmental entity; or (2) has initiated, participated, or cooperated in an investigation or administrative proceeding related to the quality of care, services, or conditions at the facility, as provided.~~

~~Because the bill would expand the conduct subject to criminal prosecution by extending the whistleblower protection to a physician and surgeon definition of a crime, it would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1278.5 of the Health and Safety Code is  
2 amended to read:

3 1278.5. (a) The Legislature finds and declares that it is the  
4 public policy of the State of California to encourage patients,  
5 nurses, ~~physicians and surgeons~~ *members of the medical staff*, and  
6 other health care workers to notify government entities of suspected  
7 unsafe patient care and conditions. The Legislature encourages  
8 this reporting in order to protect patients and in order to assist those  
9 government entities charged with ensuring that health care is safe.  
10 The Legislature finds and declares that whistleblower protections  
11 apply primarily to issues relating to the care, services, and  
12 conditions of a facility and are not intended to conflict with existing  
13 provisions in state and federal law relating to employee and  
14 employer relations.

15 ~~(b) (1) No health facility shall discriminate or retaliate in any~~  
16 ~~manner against any patient or employee of the health facility~~  
17 ~~because that patient, employee, or any other person has presented~~  
18 ~~a grievance or complaint, or has initiated, participated, or~~

1 cooperated in an investigation or proceeding of any governmental  
2 entity, relating to the care, services, or conditions of that facility.  
3 No health facility shall discriminate or retaliate in any manner  
4 against a physician and surgeon on its medical staff because the  
5 physician and surgeon has presented a grievance or complaint, or  
6 has initiated, participated, or cooperated in an investigation or  
7 proceeding of any governmental entity, relating to the care,  
8 services, or conditions of the facility, nor shall the entity that owns  
9 or operates the health facility or any other health facility that is  
10 owned or operated by that entity discriminate or retaliate against  
11 the physician and surgeon for taking those actions with respect to  
12 the facility where he or she is a member of the medical staff.

13 (b) (1) No health facility shall discriminate or retaliate, in any  
14 manner, against any patient, employee, member of the medical  
15 staff, or any other health care worker of the health facility who  
16 has done either of the following:

17 (A) Presented a grievance, complaint, or report to the facility,  
18 to an entity or agency responsible for accrediting or evaluating  
19 the facility, or the medical staff of the facility, or to any other  
20 governmental entity.

21 (B) Has initiated, participated, or cooperated in an investigation  
22 or administrative proceeding related to, the quality of care,  
23 services, or conditions at the facility that is carried out by an entity  
24 or agency responsible for accrediting or evaluating the facility or  
25 its medical staff, or governmental entity.

26 (2) No entity that owns or operates a health facility, or which  
27 owns or operates any other health facility, shall discriminate or  
28 retaliate against any person who has taken any actions pursuant  
29 to this subdivision.

30 ~~(2)~~

31 (3) A violation of this section shall be subject to a civil penalty  
32 of not more than twenty-five thousand dollars (\$25,000). The civil  
33 penalty shall be assessed and recovered through the same  
34 administrative process set forth in Chapter 2.4 (commencing with  
35 Section 1417) for long-term health care facilities.

36 (c) Any type of discriminatory treatment of a patient by whom,  
37 or upon whose behalf, a grievance or complaint has been submitted,  
38 directly or indirectly, to a governmental entity or received by a  
39 health facility administrator within 180 days of the filing of the  
40 grievance or complaint, shall raise a rebuttable presumption that

1 the action was taken by the health facility in retaliation for the  
2 filing of the grievance or complaint.

3 ~~(d) Any discriminatory treatment of an employee or of a  
4 physician and surgeon who has presented a grievance or complaint  
5 to the health facility, peer review body, or any other agency or  
6 entity responsible for reviewing health care quality, or who has  
7 initiated, participated, or cooperated in an investigation or  
8 proceeding of any governmental entity as specified in subdivision  
9 (b), if the health facility had knowledge of the initiation,  
10 participation, or cooperation by the employee or by the physician  
11 and surgeon, shall raise a rebuttable presumption that the  
12 discriminatory action was taken by the health facility in retaliation,  
13 if the discriminatory action occurs within 120 days of the filing of  
14 the grievance or complaint. For purposes of this section,  
15 “discriminatory treatment of an employee or of a physician and  
16 surgeon” shall include discharge, demotion, suspension, any other  
17 unfavorable changes in the terms or conditions of employment or  
18 of the privileges of the physician and surgeon at the health facility,  
19 or the threat of any of these actions.~~

20 *(d) (1) There shall be a rebuttable presumption that  
21 discriminatory action was taken by the health facility, or by the  
22 entity that owns or operates that health facility, or that owns or  
23 operates any other health facility, in retaliation against an  
24 employee, member of the medical staff, or any other health care  
25 worker of the facility, if responsible staff at the facility or the entity  
26 that owns or operates the facility had knowledge of the actions,  
27 participation, or cooperation of the person responsible for any  
28 acts described in paragraph (1) of subdivision (b), and the  
29 discriminatory action occurs within 120 days of the filing of the  
30 grievance or complaint by the employee, member of the medical  
31 staff or any other health care worker of the facility.*

32 *(2) For purposes of this section, discriminatory treatment of an  
33 employee, member of the medical staff, or any other health care  
34 worker includes, but is not limited to, discharge, demotion,  
35 suspension, or any other unfavorable changes in the terms or  
36 conditions of employment or of the privileges of the employee,  
37 member of the medical staff, or any other health care worker of  
38 the health care facility, or the threat of any of these actions.*

1 (e) The presumptions in subdivisions (c) and (d) shall be  
2 presumptions affecting the burden of producing evidence as  
3 provided in Section 603 of the Evidence Code.

4 (f) Any person who willfully violates this section is guilty of a  
5 misdemeanor punishable by a fine of not more than twenty  
6 thousand dollars (\$20,000).

7 (g) An employee who has been discriminated against in  
8 employment pursuant to this section shall be entitled to  
9 reinstatement, reimbursement for lost wages and work benefits  
10 caused by the acts of the employer, and the legal costs associated  
11 with pursuing the case. ~~A physician and surgeon~~ *member of the*  
12 *medical staff* who has been discriminated against pursuant to this  
13 section shall be entitled to reinstatement, reimbursement for lost  
14 income resulting from any change in the terms or conditions of  
15 his or her privileges caused by the acts of the facility or the entity  
16 that owns or operates a health facility or any other health facility  
17 that is owned or operated by that entity, and the legal costs  
18 associated with pursuing the case.

19 (h) *For purposes of this section, "health facility" means any*  
20 *facility defined under this chapter, including, but not limited to,*  
21 *the facility's administrative personnel, employees, boards, and*  
22 *committees of the board, and medical staff.*

23 ~~(h)~~

24 (i) This section shall not apply to an inmate of a correctional  
25 facility or juvenile facility of the Department of Corrections and  
26 Rehabilitation, or to an inmate housed in a local detention facility  
27 including a county jail or a juvenile hall, juvenile camp, or other  
28 juvenile detention facility.

29 ~~(i)~~

30 (j) This section shall not apply to a health facility that is a  
31 long-term health care facility, as defined in Section 1418. A health  
32 facility that is a long-term health care facility shall remain subject  
33 to Section 1432.

34 ~~(j)~~

35 (k) Nothing in this section abrogates or limits any other theory  
36 of liability or remedy otherwise available at law.

37 SEC. 2. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

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