

AMENDED IN SENATE SEPTEMBER 5, 2007

AMENDED IN SENATE JULY 17, 2007

AMENDED IN SENATE JUNE 6, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 632

Introduced by Assembly Member Salas

February 21, 2007

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 prohibit a health facility from discriminating or retaliating against any patient, employee, a member of the facility's medical staff, or any other health care worker of the facility because that person (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.

This bill would provide that an employee who has been discriminated against in employment in violation of those provisions shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, or to any remedy deemed warranted by the court pursuant to those provisions, or to any applicable provisions of statutory or common law, as specified. The bill would also entitle a health care worker who has been discriminated against, in violation of those provisions, and who prevails in court, to ~~restitution~~ *reimbursement for lost income* and any legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to those provisions, or any other applicable statutory or common law.

Because the bill would expand the 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, members of the medical staff, and other health care workers
6 to notify government entities of suspected unsafe patient care and
7 conditions. The Legislature encourages this reporting in order to
8 protect patients and in order to assist those *accreditation and*
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

1 provisions in state and federal law relating to employee and
2 employer relations.

3 (b) (1) No health facility shall discriminate or retaliate, in any
4 manner, against any patient, employee, member of the medical
5 staff, or any other health care worker of the health facility because
6 that person has done either of the following:

7 (A) Presented a grievance, complaint, or report to the facility,
8 to an entity or agency responsible for accrediting or evaluating the
9 facility, or the medical staff of the facility, or to any other
10 governmental entity.

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

16 (2) No entity that owns or operates a health facility, or which
17 owns or operates any other health facility, shall discriminate or
18 retaliate against any person ~~who~~ *because that person* has taken
19 any actions pursuant to this subdivision.

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

25 (c) Any type of discriminatory treatment of a patient by whom,
26 or upon whose behalf, a grievance or complaint has been submitted,
27 directly or indirectly, to a governmental entity or received by a
28 health facility administrator within 180 days of the filing of the
29 grievance or complaint, shall raise a rebuttable presumption that
30 the action was taken by the health facility in retaliation for the
31 filing of the grievance or complaint.

32 (d) (1) There shall be a rebuttable presumption that
33 discriminatory action was taken by the health facility, or by the
34 entity that owns or operates that health facility, or that owns or
35 operates any other health facility, in retaliation against an
36 employee, member of the medical staff, or any other health care
37 worker of the facility, if responsible staff at the facility or the entity
38 that owns or operates the facility had knowledge of the actions,
39 participation, or cooperation of the person responsible for any acts
40 described in paragraph (1) of subdivision (b), and the

1 discriminatory action occurs within 120 days of the filing of the
2 grievance or complaint by the employee, member of the medical
3 staff or any other health care worker of the facility.

4 (2) For purposes of this section, discriminatory treatment of an
5 employee, member of the medical staff, or any other health care
6 worker includes, but is not limited to, discharge, demotion,
7 ~~suspension, or any other unfavorable changes in the terms or~~
8 ~~conditions of employment or of the privileges of the employee,~~
9 *suspension, or any unfavorable changes in, or breach of, the terms*
10 *or conditions of a contract, employment, or privileges of the*
11 *employee, member of the medical staff, or any other health care*
12 *worker of the health care facility, or the threat of any of these*
13 *actions.*

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

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

20 (g) An employee who has been discriminated against in
21 employment pursuant to this section shall be entitled to
22 reinstatement, reimbursement for lost wages and work benefits
23 caused by the acts of the employer, and the legal costs associated
24 with pursuing the case, or to any remedy deemed warranted by the
25 court pursuant to this chapter or any other applicable provision of
26 statutory or common law. A health care worker who has been
27 discriminated against pursuant to this section shall be entitled to
28 ~~restitution~~ *reimbursement for lost income* and the legal costs
29 associated with pursuing the case, or to any remedy deemed
30 warranted by the court pursuant to this chapter or other applicable
31 provision of statutory or common law. A member of the medical
32 staff who has been discriminated against pursuant to this section
33 shall be entitled to reinstatement, reimbursement for lost income
34 resulting from any change in the terms or conditions of his or her
35 privileges caused by the acts of the facility or the entity that owns
36 or operates a health facility or any other health facility that is
37 owned or operated by that entity, and the legal costs associated
38 with pursuing the case, or to any remedy deemed warranted by the
39 court pursuant to this chapter or any other applicable provision of
40 statutory or common law.

1 (h) The medical staff of the health facility may petition the court
2 for an injunction to protect a peer review committee from being
3 required to comply with evidentiary demands on a pending peer
4 review ~~matters hearing from the complainant~~ *in member of the*
5 *medical staff who has filed an action pursuant to this section, if*
6 *the evidentiary demands from the complainant would impede the*
7 *peer review process or endanger the health and safety of patients*
8 *of the health facility during the peer review process. Prior to*
9 *granting an injunction, the court shall conduct an in camera review*
10 *of the evidence sought to be discovered to determine if a peer*
11 *review hearing, as authorized in Section 805 and Sections 809 to*
12 *809.5, inclusive, of the Business and Professions Code, would be*
13 *impeded. If it is determined that the peer review hearing will be*
14 *impeded, the injunction shall be granted until the peer review*
15 *hearing is completed. Nothing in this section shall preclude the*
16 *court, on motion of its own or by a party, from issuing an injunction*
17 *or other order under this subdivision in the interest of justice for*
18 *the duration of the peer review process to protect the person from*
19 *irreparable harm.*

20 (i) For purposes of this section, “health facility” means any
21 facility defined under this chapter, including, but not limited to,
22 the facility’s administrative personnel, employees, boards, and
23 committees of the board, and medical staff.

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

33 (l) *Nothing in this section shall be construed to limit the ability*
34 *of the medical staff to carry out its legitimate peer review activities*
35 *in accordance with Sections 809 to 809.5, inclusive, of the Business*
36 *and Professions Code.*

37 ~~(t)~~

38 (m) Nothing in this section abrogates or limits any other theory
39 of liability or remedy otherwise available at law.

1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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