

Assembly Bill No. 632

Passed the Assembly September 11, 2007

Chief Clerk of the Assembly

Passed the Senate September 10, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 632, 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 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.

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

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

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

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

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

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

(2) No entity that owns or operates a health facility, or which owns or operates any other health facility, shall discriminate or

retaliate against any person because that person has taken any actions pursuant to this subdivision.

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

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

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

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

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

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

(g) An employee who has been discriminated against in employment pursuant to this section shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law. A health care worker who has been discriminated against pursuant to this section shall be entitled to reimbursement for lost income and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or other applicable provision of statutory or common law. A member of the medical staff who has been discriminated against pursuant to this section shall be entitled to reinstatement, reimbursement for lost income resulting from any change in the terms or conditions of his or her privileges caused by the acts of the facility or the entity that owns or operates a health facility or any other health facility that is owned or operated by that entity, and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law.

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

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

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

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

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

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

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

Approved _____, 2007

Governor