

**ASSEMBLY BILL**

**No. 2947**

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**Introduced by Assembly Member Eng**

February 22, 2008

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An act to amend Section 1281 of the Code of Civil Procedure, and to add Section 15656.5 to the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2947, as introduced, Eng. Elder and dependent adult abuse: waiver of rights.

Existing law provides that a written agreement to submit to arbitration an existing controversy or a controversy thereafter is valid, enforceable, and irrevocable, except for those grounds that exist for the revocation of any contract.

This bill would provide that those provisions shall not apply to any arbitration agreement applicable to a future controversy entered into between a long-term care facility, as defined, an elder, as defined, or a dependent adult, as defined, or his or her representative, if the agreement is entered into in violation of a specified law prohibiting elder and dependent adult abuse.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse.

This bill would prohibit a long-term care facility, as defined, that provider care to an elder or dependent adult from requiring, as a condition of admission to, or of continued care at, the facility that an elder or dependent adult, or his or her representative waive any right afforded under the act, including the right to file a complaint with the

State Department of Public Health, or a law enforcement agency, or to pursue a civil action.

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

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

1 SECTION 1. The Legislature finds and declares the following:

2 (a) It is the public policy of the State of California to ensure  
3 that elders and dependent adults and their representatives have the  
4 full benefit of the rights and procedures contained in the Elder  
5 Abuse and Dependent Adult Civil Protection Act (EADACPA)  
6 set forth in Chapter 11 (commencing with Section 15600) of Part  
7 3 of Division 103.

8 (b) Elder and dependent adults shall not be deprived of those  
9 rights and protections by the use of coerced and involuntary  
10 waivers of rights.

11 (c) It is the purpose of this act to require that any agreement to  
12 waive any rights or procedures under the EADACPA, including  
13 any agreement to arbitrate any claim arising under that law, is a  
14 matter of voluntary consent, and not coercion.

15 SEC. 2. Section 1281 of the Code of Civil Procedure is  
16 amended to read:

17 1281. ~~A~~(a) *Except as provided in subdivision (b), a written*  
18 *agreement to submit to arbitration an existing controversy or a*  
19 *controversy thereafter arising is valid, enforceable and irrevocable,*  
20 ~~save upon such~~ *except for those grounds as exist for the revocation*  
21 *of any contract.*

22 (b) *Subdivision (a) shall not apply to any arbitration agreement*  
23 *applicable to a future controversy entered into between a long-term*  
24 *care facility, as defined in Section 15610.47 of the Welfare and*  
25 *Institutions Code, and an elder, as defined in Section 15610.47 of*  
26 *the Welfare and Institutions Code, or dependent adult, as defined*  
27 *in Section 15610.47 of the Welfare and Institutions Code, or his*  
28 *or her representative, that is entered into in violation of Section*  
29 *15657 of the Welfare and Institutions Code.*

30 SEC. 3. Section 15656.5 is added to the Welfare and  
31 Institutions Code, to read:

32 15656.5. (a) No long-term care facility, as defined in Section  
33 15610.47, that provides care to elder or dependent adults shall

1 require that an elder or dependent adult, or his or her representative,  
2 as a condition of admission to, or of continued care at, the facility  
3 waive any right afforded under this chapter, including the right to  
4 file a complaint with the State Department of Public Health, or a  
5 law enforcement agency or other entity, or to pursue a civil action.

6 (b) Any waiver of rights afforded under this chapter by an elder  
7 or dependent adult or his or her representative, under this section  
8 shall be knowing, voluntary, and in writing, and clearly not made  
9 as a condition of admission or continued care at a long-term care  
10 facility.

11 (c) Any waiver of rights, or any arbitration agreement entered  
12 by a long-term care facility and an elder or dependent adult, or his  
13 or her representative, pursuant to this section that is required as a  
14 condition of admission to, or continued care at a long-term care  
15 facility shall be considered involuntary, unconscionable, and  
16 unenforceable as an action against public policy.

17 (d) A long-term care facility shall have the burden of proving  
18 that any waiver of rights signed by an elder, or dependent adult,  
19 or his or her representative pursuant to this section, including any  
20 arbitration agreement, was knowing, voluntary, and not made as  
21 a condition of admission to, or continuing care at, the facility.