

**Assembly Bill No. 2947**

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Passed the Assembly August 29, 2008

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*Chief Clerk of the Assembly*

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Passed the Senate August 25, 2008

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

CHAPTER \_\_\_\_\_

An act to add Section 15656.5 to the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

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

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, on and after January 1, 2009, prohibit a residential care facility for the elderly that provides care to an elder or dependent adult from requiring, as a condition of admission to, or of continued care or residence at, the facility that an elder or dependent adult, or his or her representative, waive any legal rights, duties, remedies, forums, or procedures under the act, including the right to file and pursue a complaint with the State Department of Social Services, or a law enforcement agency, or to file and pursue a civil action based on a claim for physical abuse, neglect, or death.

This bill would provide that any provision in an agreement entered into by a residential care facility for the elderly and an elder or dependent adult, or his or her representative, in which legal rights, remedies, duties, forums, or procedures are waived in violation of this bill shall be considered unenforceable as an action against public policy.

This bill would, on and after January 1, 2009, prohibit a residential care facility for the elderly from refusing to enter into an agreement with an elder or dependent adult, or his or her representative, regarding admission to, or continued care or residence at, the facility because he or she refuses to waive legal rights, duties, remedies, forums, or procedures provided for in the act.

This bill would require any waiver of legal rights, duties, remedies, forums, or procedures under the act by an elder or dependent adult, or his or her representative, to be knowing, voluntary, and not made as a condition of admission to, or

continuing care or residence at, the residential care facility for the elderly.

This bill would create a rebuttable presumption that a waiver of legal rights, duties, remedies, forums, or procedures is involuntary if the waiver was made prior to or on the day of admission. The bill would provide that it is not intended to affect existing law relating to the enforceability or unenforceability of an arbitration agreement.

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

SECTION 1. The Legislature finds and declares the following:

(a) Unlike health facilities providing 24-hour care that are licensed under Section 1250 of the Health and Safety Code, current statutory law does not specifically regulate or prohibit the forced and coercive waiver of legal rights in written agreements with facilities licensed as residential care facilities for the elderly. It is the public policy of the State of California to ensure that elders and dependent adults and their representatives have the full benefit of the legal rights, duties, remedies, forums, and procedures contained in the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) set forth in Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

(b) Over two million elders are abused each year, and it is estimated that one out of every 20 elders is a victim of neglect or physical, psychological, or financial abuse.

(c) The Legislature recognizes that its enactment of the EADACPA is to protect elders and dependent adults and to ensure that they have the full protections afforded through administrative and law enforcement processes, as well as recourse in a civil action.

(d) Elder and dependent adults shall not be deprived of those legal rights, duties, remedies, forums, and procedures by the use of coerced and involuntary waivers.

(e) It is the purpose of this act to require that any agreement to waive any legal rights, duties, remedies, forums, or procedures under the EADACPA, including any agreement that has the effect of limiting the application or enforcement of the full rights, duties, remedies, forums, or procedures available under EADACPA, is a matter of voluntary consent, and not coercion.

SEC. 2. Section 15656.5 is added to the Welfare and Institutions Code, to read:

15656.5. (a) No residential care facility for the elderly, as defined in Section 1569.2, that provides care to elder or dependent adults shall, on and after January 1, 2009, require that an elder or dependent adult, or his or her representative, as a condition of admission to, or of continued care or residence at, the facility waive any legal rights, duties, remedies, forums, or procedures under this chapter, including the right to file and pursue a complaint with the State Department of Social Services, or a law enforcement agency or other entity, or to file and pursue a civil action based on a claim for physical abuse, neglect, or death.

(b) Any waiver of legal rights, remedies, duties, forums, or procedures under this chapter by an elder or dependent adult or his or her representative, on and after January 1, 2009, shall be knowing, voluntary, and in writing, and expressly not made a condition of admission or continued care or residence at a residential care facility for the elderly.

(c) Any provision in an agreement entered into by a residential care facility for the elderly and an elder or dependent adult, or his or her representative, in which legal rights, remedies, duties, forums, or procedures are waived in violation of this section shall be considered unenforceable as an action against public policy. Nothing in this section shall affect the enforceability or validity of any other provision in the admission agreement.

(d) On and after January 1, 2009, a residential care facility for the elderly shall not refuse to enter into an agreement with an elder or dependent adult, or his or her representative, regarding admission to, or continued care or residence at, the facility because he or she refuses to waive legal rights, duties, remedies, forums, or procedures provided for in this chapter. The exercise by an elder or dependent adult, or his or her representative, of the right to refuse to waive legal rights, duties, remedies, forums, or procedures under this chapter, including a rejection of an agreement requiring that waiver, shall not affect any other term of the agreement.

(e) A residential care facility for the elderly shall have the burden of proving that any waiver of legal rights, duties, remedies, forums, or procedures under this chapter by an elder, or dependent adult, or his or her representative, was knowing, voluntary, and

not made as a condition of admission to, or continuing care or residence at, the facility.

(f) A waiver of legal rights, duties, remedies, forums, or procedures under this chapter shall be presumed to be involuntary if the waiver was made prior to or on the day of admission to the facility. This presumption may be rebutted by a preponderance of the evidence.

(g) This section shall apply to any agreement between an elder or dependent adult, or his or her representative, and a residential care facility for the elderly for the admission to, or continued care or residence at, the facility that is entered into, altered, modified, renewed, or extended on or after January 1, 2009.

SEC. 3. Nothing in this act is intended to affect existing law relating to the enforceability or unenforceability of an arbitration agreement.





Approved \_\_\_\_\_, 2008

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*Governor*