

AMENDED IN SENATE APRIL 19, 2010

AMENDED IN SENATE APRIL 6, 2010

SENATE BILL

No. 1329

**Introduced by Senator Leno
(Coauthor: Senator Romero)**

February 19, 2010

An act to ~~amend Sections 1569.33 and 1569.682 of, and to add Section 1569.686 to;~~ the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

SB 1329, as amended, Leno. Residential care facilities for the elderly.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services. *Existing law authorizes the director to take enforcement action, including, but not limited to, actions to suspend or revoke a license and to impose civil penalties for violations.* Under existing law, a violation of these provisions is a crime.

~~Existing law requires the department to conduct an annual unannounced visit of a facility under specified circumstances.~~

This bill would *enact the RCFE Residents Foreclosure Protection Act of 2010 which would, with certain exceptions, require the licensee of a facility to notify the department in writing within 24 hours 2 business days of specified events or obtaining knowledge of these events, and would require the department to conduct an annual unannounced visit to the facility when the facility experiences any of these events initiate a compliance plan, noncompliance conference, or other administrative action upon receipt of the notification.*

This bill would require the licensee of a facility, *with certain exceptions*, to notify all residents and, if applicable, their legal representatives, as well as applicants and potential residents, of specified events.

~~Existing law requires a licensee of a facility, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of forfeiture of a license, or change of use of the facility pursuant to the department's regulations, to take reasonable steps to transfer affected residents safely and to minimize possible trauma, as specified.~~

~~This bill would make the above-described reasonable steps requirement applicable to an immediate successor in interest to property that includes a residential care facility for the elderly.~~

By expanding the definition of an existing crime, this bill 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. This act shall be known, and may be cited, as the
- 2 RCFE Residents Foreclosure Protection Act of 2010.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) There are currently approximately 8,000 residential care
- 5 facilities for the elderly (RCFEs) in California.
- 6 (b) The vast majority of RCFEs are located in single-family
- 7 dwellings, with a mortgage on the property.
- 8 (c) The best interests of the residents of RCFEs requires
- 9 procedures to ensure that they are notified and protected whenever
- 10 their home is subject to a foreclosure or other event indicating
- 11 significant financial distress.
- 12 (d) Therefore, it is the intent of the Legislature in enacting this
- 13 act to establish procedures to protect RCFE residents by providing
- 14 them and the state with information when an RCFE is suffering
- 15 foreclosure proceedings or experiencing financial distress.

1 ~~SEC. 3. Section 1569.33 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~1569.33. (a) Every licensed residential care facility for the~~
4 ~~elderly shall be subject to unannounced visits by the department.~~
5 ~~The department shall visit these facilities as often as necessary to~~
6 ~~ensure the quality of care provided.~~

7 ~~(b) The department shall conduct an annual unannounced visit~~
8 ~~of a facility under any of the following circumstances:~~

9 ~~(1) When a license is on probation.~~

10 ~~(2) When the terms of agreement in a facility compliance plan~~
11 ~~require an annual evaluation.~~

12 ~~(3) When an accusation against a licensee is pending.~~

13 ~~(4) When a facility requires an annual visit as a condition of~~
14 ~~receiving federal financial participation.~~

15 ~~(5) In order to verify that a person who has been ordered out of~~
16 ~~the facility for the elderly by the department is no longer at the~~
17 ~~facility.~~

18 ~~(6) When a facility experiences any of the events described in~~
19 ~~subdivision (e) of Section 1569.686.~~

20 ~~(c) (1) The department shall conduct annual unannounced visits~~
21 ~~to no less than 20 percent of facilities not subject to an evaluation~~
22 ~~under subdivision (b). These unannounced visits shall be conducted~~
23 ~~based on a random sampling methodology developed by the~~
24 ~~department.~~

25 ~~(2) If the total citations issued by the department exceed the~~
26 ~~previous year's total by 10 percent, the following year the~~
27 ~~department shall increase the random sample by 10 percent of the~~
28 ~~facilities not subject to an evaluation under subdivision (b). The~~
29 ~~department may request additional resources to increase the random~~
30 ~~sample by 10 percent.~~

31 ~~(d) Under no circumstance shall the department visit a residential~~
32 ~~care facility for the elderly less often than once every five years.~~

33 ~~(e) The department shall notify the residential care facility for~~
34 ~~the elderly in writing of all deficiencies in its compliance with the~~
35 ~~provisions of this chapter and the rules and regulations adopted~~
36 ~~pursuant to this chapter, and shall set a reasonable length of time~~
37 ~~for compliance by the facility.~~

38 ~~(f) Reports on the results of each inspection, evaluation, or~~
39 ~~consultation shall be kept on file in the department, and all~~

1 inspection reports, consultation reports, lists of deficiencies, and
2 plans of correction shall be open to public inspection.

3 ~~(g) As a part of the department's evaluation process, the~~
4 ~~department shall review the plan of operation, training logs, and~~
5 ~~marketing materials of any residential care facility for the elderly~~
6 ~~that advertises or promotes special care, special programming, or~~
7 ~~a special environment for persons with dementia to monitor~~
8 ~~compliance with Sections 1569.626 and 1569.627.~~

9 SEC. 4. ~~Section 1569.682 of the Health and Safety Code is~~
10 ~~amended to read:~~

11 ~~1569.682. (a) A licensee of a licensed residential care facility~~
12 ~~for the elderly or an immediate successor in interest to property~~
13 ~~on which a residential care facility for the elderly is located, shall,~~
14 ~~prior to transferring a resident of the facility to another facility or~~
15 ~~to an independent living arrangement as a result of the forfeiture~~
16 ~~of a license, as described in subdivision (a), (b), or (f) of Section~~
17 ~~1569.19 or change of use of the facility pursuant to the~~
18 ~~department's regulations, take all reasonable steps to transfer~~
19 ~~affected residents safely and to minimize possible transfer trauma,~~
20 ~~and shall, at a minimum, do all of the following:~~

21 ~~(1) Prepare, for each resident, a relocation evaluation of the~~
22 ~~needs of that resident, which shall include both of the following:~~

23 ~~(A) Recommendations on the type of facility that would meet~~
24 ~~the needs of the resident based on the current service plan.~~

25 ~~(B) A list of facilities, within a 60-mile radius of the resident's~~
26 ~~current facility, that meet the resident's present needs.~~

27 ~~(2) Provide each resident or the resident's responsible person~~
28 ~~with a written notice no later than 60 days before the intended~~
29 ~~eviction. The notice shall include all of the following:~~

30 ~~(A) The reason for the eviction, with specific facts to permit a~~
31 ~~determination of the date, place, witnesses, and circumstances~~
32 ~~concerning the reasons.~~

33 ~~(B) A copy of the resident's current service plan.~~

34 ~~(C) The relocation evaluation.~~

35 ~~(D) A list of referral agencies.~~

36 ~~(E) The right of the resident or resident's legal representative~~
37 ~~to contact the department to investigate the reasons given for the~~
38 ~~eviction pursuant to Section 1569.35.~~

- 1 ~~(3) Discuss the relocation evaluation with the resident and his~~
2 ~~or her legal representative within 30 days of issuing the notice of~~
3 ~~eviction.~~
- 4 ~~(4) Submit a written report of any eviction to the licensing~~
5 ~~agency within five days.~~
- 6 ~~(5) Upon issuing the written notice of eviction, a licensee shall~~
7 ~~not accept new residents or enter into new admission agreements.~~
- 8 ~~(6) (A) For paid preadmission fees in excess of five hundred~~
9 ~~dollars (\$500), the resident is entitled to a refund in accordance~~
10 ~~with all of the following:~~
 - 11 ~~(i) A 100-percent refund if preadmission fees were paid within~~
12 ~~six months of notice of eviction.~~
 - 13 ~~(ii) A 75-percent refund if preadmission fees were paid more~~
14 ~~than six months but not more than 12 months before notice of~~
15 ~~eviction.~~
 - 16 ~~(iii) A 50-percent refund if preadmission fees were paid more~~
17 ~~than 12 months but not more than 18 months before notice of~~
18 ~~eviction.~~
 - 19 ~~(iv) A 25-percent refund if preadmission fees were paid more~~
20 ~~than 18 months but less than 25 months before notice of eviction.~~
- 21 ~~(B) No preadmission refund is required if preadmission fees~~
22 ~~were paid 25 months or more before the notice of eviction.~~
- 23 ~~(C) The preadmission refund required by this paragraph shall~~
24 ~~be paid within 15 days of issuing the eviction notice. In lieu of the~~
25 ~~refund, the resident may request that the licensee provide a credit~~
26 ~~toward the resident's monthly fee obligation in an amount equal~~
27 ~~to the preadmission fee refund due.~~
- 28 ~~(7) If the resident gives notice five days before leaving the~~
29 ~~facility, the licensee shall refund to the resident or his or her legal~~
30 ~~representative a proportional per diem amount of any prepaid~~
31 ~~monthly fees at the time the resident leaves the facility and the~~
32 ~~unit is vacated. Otherwise the licensee shall pay the refund within~~
33 ~~seven days from the date that the resident leaves the facility and~~
34 ~~the unit is vacated.~~
- 35 ~~(8) Within 10 days of all residents having left the facility, the~~
36 ~~licensee, based on information provided by the resident or~~
37 ~~resident's legal representative, shall submit a final list of names~~
38 ~~and new locations of all residents to the department and the local~~
39 ~~ombudsperson program.~~

1 ~~(b) If seven or more residents of a residential care facility for~~
2 ~~the elderly will be transferred as a result of the forfeiture of a~~
3 ~~license or change in the use of the facility pursuant to subdivision~~
4 ~~(a), the licensee shall submit a proposed closure plan to the~~
5 ~~department for approval. The department shall approve or~~
6 ~~disapprove the closure plan, and monitor its implementation, in~~
7 ~~accordance with the following requirements:~~

8 ~~(1) Upon submission of the closure plan, the licensee shall be~~
9 ~~prohibited from accepting new residents and entering into new~~
10 ~~admission agreements for new residents.~~

11 ~~(2) The closure plan shall meet the requirements described in~~
12 ~~subdivision (a), and describe the staff available to assist in the~~
13 ~~transfers. The department's review shall include a determination~~
14 ~~as to whether the licensee's closure plan contains a relocation~~
15 ~~evaluation for each resident.~~

16 ~~(3) Within 15 working days of receipt, the department shall~~
17 ~~approve or disapprove the closure plan prepared pursuant to this~~
18 ~~subdivision, and, if the department approves the plan, it shall~~
19 ~~become effective upon the date the department grants its written~~
20 ~~approval of the plan.~~

21 ~~(4) If the department disapproves a closure plan, the licensee~~
22 ~~may resubmit an amended plan, which the department shall~~
23 ~~promptly either approve or disapprove, within 10 working days~~
24 ~~of receipt by the department of the amended plan. If the department~~
25 ~~fails to approve a closure plan, it shall inform the licensee, in~~
26 ~~writing, of the reasons for the disapproval of the plan.~~

27 ~~(5) If the department fails to take action within 20 working days~~
28 ~~of receipt of either the original or the amended closure plan, the~~
29 ~~plan, or amended plan, as the case may be, shall be deemed~~
30 ~~approved.~~

31 ~~(6) Until the time that the department has approved a licensee's~~
32 ~~closure plan, the facility shall not issue a notice of transfer or~~
33 ~~require any resident to transfer.~~

34 ~~(7) Upon approval by the department, the licensee shall send a~~
35 ~~copy of the closure plan to the local ombudsperson program.~~

36 ~~(e) (1) If a licensee fails to comply with the requirements of~~
37 ~~subdivision (a), and if the director determines that it is necessary~~
38 ~~to protect the residents of a facility from physical or mental abuse,~~
39 ~~abandonment, or any other substantial threat to health or safety,~~
40 ~~the department shall take any necessary action to minimize trauma~~

1 for the residents. The department shall contact any local agency
2 that may have placement or advocacy responsibility for the
3 residents, and shall work with those agencies to locate alternative
4 placement sites, contact relatives or other persons responsible for
5 the care of these residents, provide onsite evaluation of the
6 residents, and assist in the transfer of residents.

7 (2) The participation of the department and local agencies in
8 the relocation of residents from a residential care facility for the
9 elderly shall not relieve the licensee of any responsibility under
10 this section. A licensee that fails to comply with the requirements
11 of this section shall be required to reimburse the department and
12 local agencies for the cost of providing the relocation services. If
13 the licensee fails to provide the relocation services required in
14 subdivisions (a) and (b), then the department may request that the
15 Attorney General's office, the city attorney's office, or the local
16 district attorney's office seek injunctive relief and damages in the
17 same manner as provided for in Chapter 5 (commencing with
18 Section 17200) of Part 2 of Division 7 of the Business and
19 Professions Code.

20 (d) A licensee who fails to comply with requirements of this
21 section shall be liable for the imposition of civil penalties in the
22 amount of one hundred dollars (\$100) per violation per day for
23 each day that the licensee is in violation of this section, until such
24 time that the violation has been corrected. The civil penalties shall
25 be issued immediately following the written notice of violation.
26 However, if the violation does not present an immediate or
27 substantial threat to the health or safety of residents and the licensee
28 corrects the violation within three days after receiving the notice
29 of violation, the licensee shall not be liable for payment of any
30 civil penalties pursuant to this subdivision related to the corrected
31 violation.

32 (e) A resident of a residential care facility for the elderly covered
33 under this section, may bring a civil action against any person,
34 firm, partnership, or corporation who owns, operates, establishes,
35 manages, conducts, or maintains a residential care facility for the
36 elderly who violates the rights of a resident, as set forth in this
37 section. Any person, firm, partnership, corporation, or immediate
38 successor in interest to property on which a residential care facility
39 for the elderly is located, who owns, operates, establishes, manages,
40 conducts, maintains, or takes a residential care facility for the

1 elderly who violates this section shall be responsible for the acts
2 of the facility's employees and shall be liable for costs and attorney
3 fees. This residential care facility for the elderly may also be
4 enjoined from permitting the violation to continue. The remedies
5 specified in this section shall be in addition to any other remedy
6 provided by law.

7 (f) This section does not apply to a licensee that has obtained a
8 certificate of authority to offer continuing care contracts, as defined
9 in paragraph (8) of subdivision (c) of Section 1771.

10 ~~SEC. 5.~~

11 *SEC. 3.* Section 1569.686 is added to the Health and Safety
12 Code, to read:

13 1569.686. (a) Within ~~24 hours~~ *two business days* of any event,
14 or obtaining knowledge of any event, described in subdivision (b),
15 the licensee of a residential care facility for the elderly shall notify
16 the department in writing of the event. This notification may be
17 provided by telephone facsimile, overnight mail, or by telephone
18 with a written confirmation within five calendar days after the
19 telephone call. *Upon receipt of the notification, the department*
20 *shall initiate a compliance plan, noncompliance conference, or*
21 *other administrative action.*

22 (b) Any of the following events requires notification pursuant
23 to this section:

24 (1) Failure to make one or more mortgage, *lease, or rental*
25 *payments on the property within 30 days of the due date.*

26 (2) Failure to make timely payment of any premiums required
27 to maintain mandated insurance policies or bonds in effect, or any
28 tax lien levied by any government agency. *Notice to the department*
29 *is not required when an insurance premium has not been paid due*
30 *to the fault of an escrow account servicer.*

31 (3) A utility company has sent notice of intent to terminate a
32 utility on the property.

33 (4) A judgment lien has been levied against the facility or any
34 of the assets of the facility or licensee.

35 (5) A financial institution refuses to honor a check or other
36 instrument issued by the licensee to its employees for a regular
37 payroll *due to insufficient funds.*

38 (6) The financial resources of the licensee fall below the amount
39 needed to operate the facility for a period of at least 45 days based
40 on the current occupancy of the facility.

1 (7) A notice of foreclosure is issued on the property.

2 (8) An unlawful detainer action is initiated against the licensee.

3 (9) The licensee files for bankruptcy.

4 (c) A licensee shall notify all residents and, if applicable, their
5 legal representatives, ~~within 24 hours in writing, within two~~
6 *business days* of any of the following events, or knowledge of the
7 event:

8 (1) A notice of foreclosure is issued on the property.

9 (2) An unlawful detainer action is initiated against the licensee.

10 (3) The licensee files for bankruptcy.

11 (d) A licensee shall notify applicants and potential residents,
12 prior to admission, of any of the following events, or knowledge
13 of the event:

14 (1) A notice of foreclosure is issued on the property.

15 (2) An unlawful detainer action is initiated against the licensee.

16 (3) The licensee files for bankruptcy.

17 (e) A licensee who fails to comply with this section shall be
18 liable for *immediate* civil penalties in the amount of one hundred
19 dollars (\$100) for each day of the failure to provide notification
20 required in this section. *The total civil penalty shall not exceed*
21 *two thousand dollars (\$2,000).* ~~If residents are a resident is~~
22 *relocated without the adequate notification required by this section,*
23 *or if the health or safety of a resident has been compromised as a*
24 *result of a relocation that has occurred without adequate*
25 *notification, the department may also suspend or revoke the*
26 *licensee’s license and issue a permanent revocation of the licensee’s*
27 *ability to operate or act as an administrator of a facility anywhere*
28 *in the state.*

29 (f) For purposes of this section, “property” means the land or
30 building in which a residential care facility for the elderly is
31 located.

32 (g) *This section shall not apply to licensees of residential care*
33 *facilities for the elderly that have obtained a certificate of*
34 *authority, as defined in paragraph (5) of subdivision (c) of Section*
35 *1771, to offer continuing care contracts, as defined in paragraph*
36 *(8) of subdivision (c) of Section 1771.*

37 ~~SEC. 6.~~

38 *SEC. 4.* No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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