

AMENDED IN SENATE MAY 14, 2012

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 861

Introduced by Assembly Members ~~Hill and Nestande~~ Member *Hill*

February 17, 2011

~~An act to add a heading as Article 1 (commencing with Section 104100) to, and to add Article 2 (commencing with Section 104141) to, Chapter 1 of Part 1 of Division 103 of, the Health and Safety Code, relating to stroke. An act to add Part 14 (commencing with Section 14640) to Division 3 of Title 1 of the Corporations Code, and to amend Sections 2110 and 2111 of, and to add Sections 451.6 and 451.7 to, the Public Utilities Code, relating to public utilities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 861, as amended, ~~Hill. California Stroke Registry. Public Utilities Act: remedies for violation: gas and electrical corporation executive officer compensation incentives.~~

(1) The California Constitution establishes the Public Utilities Commission, with regulatory jurisdiction over all public utilities, as defined. The Public Utilities Act provides that every public utility and every officer, agent, or employee of a public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the California Constitution or of the act, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been

provided, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.

This bill would provide that the fine may not exceed \$5,000.

(2) The act additionally provides that every corporation or person, other than a public utility and its officers, agents, or employees, knowingly violating or failing to comply with, or procuring, aiding, or abetting any violation of the California Constitution relating to public utilities or of the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or procuring, aiding, or abetting any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than \$500, or more than \$20,000, for each offense.

This bill would increase the penalty to not less than \$1,000 and not more than \$1,000,000 for each offense.

(3) Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires that any expense resulting from a bonus paid to an executive officer, as defined, of a public utility that has ceased to pay its debts in the ordinary course of business, be borne by the shareholders of the public utility and prohibits any expense from being recovered in rates.

This bill would require that any expense resulting from an earnings- or stock price-based incentive program paid to an executive officer of an electrical or gas corporation be borne by the shareholders of the utility and would prohibit any expense from being recovered in rates. Because this provision of the bill would be a part of the act and because a violation of an order or decision of the commission implementing this requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(4) This bill would require the commission to require an energy utility, as defined, to prohibit compensation, as defined, to utility officers, as defined, if the energy utility does not implement a policy that, in the event a fine or penalty is levied by the commission, the energy utility would recover a proportional amount of the incentive-based compensation, as defined, received by any current or former officers of the energy utility during the 5-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the

fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.

(5) The General Corporation Law authorizes and regulates the formation and governance of general corporations.

This bill would require a holding company of an investor-owned energy utility, as defined, in the event a fine or penalty is levied by the commission on the investor-owned energy utility, to recover a proportional amount of the incentive-based compensation, as defined, received by any current or former officers of the utility holding company during the 5-year period preceding the date on which the fine or penalty was levied in excess of what would have been paid to the officers in incentive-based compensation had the fine or penalty been levied during the period in which the violation that resulted in the fine or penalty occurred.

(6) 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.

~~Existing law authorizes the State Department of Public Health to perform studies, demonstrate innovative methods, and disseminate information relating to the protection, preservation, and advancement of public health.~~

~~This bill would establish the California Stroke Registry, to be administered by the State Department of Public Health, as specified, to serve as a centralized repository for stroke data to promote quality improvement for acute stroke treatment. The bill would require that the program be implemented only to the extent funds from federal or private sources are made available for this purpose.~~

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

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

- 1 SECTION 1. Part 14 (commencing with Section 14640) is
- 2 added to Division 3 of Title 1 of the Corporations Code, to read:

1 PART 14. PUBLIC UTILITY HOLDING COMPANIES

2
3 14640. For purposes of this part, the following terms have the
4 following meanings:

5 (a) “Commission” means the Public Utilities Commission.

6 (b) “Holding company” means an entity with ownership of 80
7 percent or more of an investor-owned energy utility.

8 (c) “Incentive-based compensation” means, including, but not
9 limited to, short-term incentives, long-term incentives, stock options
10 awarded as compensation, and special recognition awards.

11 (d) “Investor-owned energy utility” means a gas corporation,
12 as defined in Section 222, an electrical corporation, as defined in
13 Section 218, of the Public Utilities Code, or one that is both a gas
14 corporation and an electrical corporation.

15 (e) “Officer” means a person required to file under Section 16
16 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.)
17 with respect to an investor-owned energy utility or a utility holding
18 company of an investor-owned energy utility.

19 14641. In the event a fine or penalty is levied by the commission
20 on an investor-owned energy utility, the holding company shall
21 recover a proportional amount of the incentive-based compensation
22 received by any current or former officers of the holding company
23 during the five-year period preceding the date on which the fine
24 or penalty was levied in excess of what would have been paid to
25 the officers in incentive-based compensation had the fine or penalty
26 been levied during the period in which the violation that resulted
27 in the fine or penalty occurred.

28 SEC. 2. Section 451.6 is added to the Public Utilities Code, to
29 read:

30 451.6. (a) Any expense resulting from an earnings- or stock
31 price-based incentive program paid to an executive officer of an
32 electrical corporation or a gas corporation shall not be
33 recoverable either directly or indirectly in rates and shall be borne
34 exclusively by the shareholders of the public utility.

35 (b) For purposes of this section, “executive officer” means any
36 person who performs policymaking functions and is employed by
37 the electrical corporation or gas corporation subject to the
38 approval of the board of directors, and includes the president,
39 secretary, treasurer, and any vice president in charge of a principal
40 business unit, division, or function of the utility.

1 SEC. 3. Section 451.7 is added to the Public Utilities Code, to
2 read:

3 451.7. (a) For purposes of this section, the following terms
4 have the following meanings:

5 (1) "Compensation" means, but is not limited to, base pay,
6 health and welfare benefits, retirement benefits, and other benefit
7 programs.

8 (2) "Energy utility" means a gas corporation, an electrical
9 corporation, or that is both a gas corporation and an electrical
10 corporation.

11 (3) "Incentive-based compensation" means, but is not limited
12 to, short-term incentives, long-term incentives, stock options
13 awarded as compensation, and special recognition awards.

14 (4) "Officer" means a person required to file under Section 16
15 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.)
16 with respect to an energy utility.

17 (b) The commission shall require an energy utility to prohibit
18 compensation to utility officers if the energy utility does not
19 implement a policy that, in the event a fine or penalty is levied by
20 the commission, the energy utility shall recover a proportional
21 amount of the incentive-based compensation received by any
22 current or former officers of the energy utility during the five-year
23 period preceding the date on which the fine or penalty was levied
24 in excess of what would have been paid to the officers in
25 incentive-based compensation had the fine or penalty been levied
26 during the period in which the violation that resulted in the fine
27 or penalty occurred.

28 SEC. 4. Section 2110 of the Public Utilities Code is amended
29 to read:

30 2110. Every public utility and every officer, agent, or employee
31 of any public utility, who violates or fails to comply with, or who
32 procures, aids, or abets any violation by any public utility of any
33 provision of the ~~Constitution of this state~~ California Constitution
34 or of this part, or who fails to comply with any part of any order,
35 decision, rule, direction, demand, or requirement of the
36 commission, or who procures, aids, or abets any public utility in
37 such the violation or noncompliance in a case in which a penalty
38 has not otherwise been provided, is guilty of a misdemeanor and
39 is punishable by a fine not exceeding ~~one~~ five thousand dollars

1 ~~(\$1,000)~~ (\$5,000), or by imprisonment in a county jail not
2 exceeding one year, or by both ~~such~~ fine and imprisonment.

3 *SEC. 5. Section 2111 of the Public Utilities Code is amended*
4 *to read:*

5 2111. Every corporation or person, other than a public utility
6 and its officers, agents, or employees, which or who knowingly
7 violates or fails to comply with, or procures, aids or abets any
8 violation of any provision of the ~~Constitution of this state~~
9 *California Constitution* relating to public utilities or of this part,
10 or fails to comply with any part of any order, decision, rule,
11 direction, demand, or requirement of the commission, or who
12 procures, aids, or abets any public utility in ~~such~~ *the* violation or
13 noncompliance, in a case in which a penalty has not otherwise
14 been provided for ~~such~~ *the* corporation or person, is subject to a
15 penalty of not less than ~~five hundred~~ *one thousand* dollars ~~(\$500)~~
16 *(\$1,000)*, nor more than ~~twenty thousand~~ *one* million dollars ~~(\$20,000)~~
17 *(\$1,000,000)* for each offense.

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

27 ~~SECTION 1. The Legislature finds and declares all of the~~
28 ~~following:~~

29 ~~(a) Stroke, also known as cerebrovascular accident or brain~~
30 ~~attack, is the third leading cause of death and the leading cause of~~
31 ~~severe, long-term disability and death in California.~~

32 ~~(b) Stroke kills approximately 15,585 Californians each year~~
33 ~~and accounts for almost 200,000 hospitalizations.~~

34 ~~(c) The rapid identification, diagnosis, and treatment of stroke~~
35 ~~can save the lives of stroke patients and in some cases can reverse~~
36 ~~neurological damage, such as paralysis and speech and language~~
37 ~~impairments, leaving stroke patients with few or no neurological~~
38 ~~deficits.~~

1 ~~SEC. 2.—The heading of Article 1 (commencing with Section~~
2 ~~104100) is added to Chapter 1 of Part 1 of Division 103 of the~~
3 ~~Health and Safety Code, to read:~~

4
5 ~~Article 1. High Blood Pressure~~
6

7 ~~SEC. 3.—Article 2 (commencing with Section 104141) is added~~
8 ~~to Chapter 1 of Part 1 of Division 103 of the Health and Safety~~
9 ~~Code, to read:~~

10
11 ~~Article 2. California Stroke Registry~~
12

13 ~~104141.—(a) The State Department of Public Health shall~~
14 ~~establish a statewide California Stroke Registry. The purpose of~~
15 ~~this registry is to serve as a centralized repository for stroke data~~
16 ~~to promote quality improvement for acute stroke treatment. The~~
17 ~~registry shall align with the stroke consensus metrics developed~~
18 ~~by national health organizations such as the federal Centers for~~
19 ~~Disease Control and Prevention, The Joint Commission, the~~
20 ~~American Heart Association, and the American Stroke Association.~~
21 ~~The acquisition of data for the registry shall be by voluntary reports~~
22 ~~and encompass all areas of the state for which stroke data are~~
23 ~~available.~~

24 ~~(b) The registry shall be under the direction of the director and~~
25 ~~housed within the California Heart Disease and Stroke Prevention~~
26 ~~Program. The cardiovascular disease program may accept, on~~
27 ~~behalf of the state, grants of public or private funds.~~

28 ~~(c) The department may contract with an agency, including, but~~
29 ~~not limited to, a health systems agency, single county health~~
30 ~~department, or multicounty health department groupings,~~
31 ~~representing a designated reporting region for the purposes of~~
32 ~~collecting and collating acute stroke data.~~

33 ~~(d) The department may contract, or provide grant awards, to~~
34 ~~implement public health activities to fulfill required funding award~~
35 ~~objectives.~~

36 ~~(e) In establishing the registry, the director shall:~~

37 ~~(1) Maintain a statewide stroke database that compiles~~
38 ~~information and statistics voluntarily reported on stroke care. To~~
39 ~~the extent possible, the department shall coordinate with the~~

1 organizations specified in subdivision (a) to avoid duplication and
2 redundancy in data collection.

3 (2) Recommend that hospitals and emergency medical services
4 agencies report case-specific data that is voluntarily reported on
5 the treatment of individuals with suspected acute stroke to the
6 representative of the department authorized to compile the stroke
7 data, or any individual, agency, or organization designated to
8 cooperate with that representative.

9 (3) Encourage sharing of information and data among health
10 care providers to improve the quality of care for stroke.

11 (4) Facilitate the communication and analysis of health
12 information and data among the health care professionals providing
13 care for individuals with stroke.

14 (5) Consult with the Stroke Advisory Committee regarding ways
15 in which to improve the quality of stroke care and delivery in
16 California.

17 (f) All information collected pursuant to this section shall be
18 confidential. For purposes of this section, this information shall
19 be referred to as “confidential information.”

20 104141.5. (a) Persons with a valid scientific interest who are
21 engaged in demographic, epidemiological, or other similar studies
22 related to health, and who meet qualifications determined by the
23 department, and who agree, in writing, to maintain confidentiality,
24 may be authorized to access confidential information for research
25 purposes. An entity that receives confidential information from
26 the department shall ensure the confidentiality of the information.
27 The department shall provide only information that does not
28 identify individual cases or institutional or individual sources of
29 information. Before confidential information is disclosed for study,
30 researchers shall do both of the following:

31 (1) Obtain approval of their committee for the protection of
32 human subjects established in accordance with Part 46
33 (commencing with Section 46.101) of Title 45 of the Code of
34 Federal Regulations.

35 (2) Provide documentation to the department that demonstrates
36 to the department’s satisfaction that the entity has established the
37 procedures and ability to maintain the confidentiality of the
38 information.

39 (b) Notwithstanding any other law, any disclosure authorized
40 by this section shall include only the information necessary for the

1 stated purpose of the requested disclosure, used for the approved
2 purpose, and not be further disclosed.

3 (e) ~~The furnishing of confidential information to the department
4 or its authorized representative in accordance with this section
5 shall not expose any person, agency, or entity furnishing
6 information to liability, and shall not be considered a waiver of
7 any privilege or a violation of a confidential relationship.~~

8 (d) ~~The department shall maintain an accurate record of all
9 persons who are given access to confidential information. The
10 record shall include the name of the person authorizing access;
11 name, title, address, and organizational affiliation of persons given
12 access; dates of access; and the specific purpose for which
13 information is to be used. The record of access shall be open to
14 public inspection during normal operating hours of the department.~~

15 (e) ~~Notwithstanding any other law, no part of the confidential
16 information shall be available for subpoena, nor shall it be
17 disclosed, discoverable, or compelled to be produced in any civil,
18 criminal, administrative, or other proceeding, nor shall this
19 information be deemed admissible as evidence in any civil,
20 criminal, administrative, or other tribunal or court for any reason.~~

21 (f) ~~This section shall not prohibit the publication of reports and
22 statistical compilations that do not in any way identify individual
23 cases or institutional or individual sources of information.~~

24 (g) ~~Notwithstanding the restrictions in this section, the individual
25 to whom the information pertains shall have access to his or her
26 own information in accordance with Chapter 1 (commencing with
27 Section 1798) of Title 1.8 of the Civil Code.~~

28 104142. For the purpose of this article, stroke means either of
29 the following:

30 (a) ~~Ischemic stroke, defined as an occlusion of a blood vessel
31 that blocks blood flow to the brain, depriving the brain of oxygen,
32 and resulting in brain tissue death. This definition includes transient
33 ischemic attacks, defined as stroke-like symptoms for less than 24
34 hours.~~

35 (b) ~~Hemorrhagic stroke, defined as a rupture of a blood vessel,
36 resulting in bleeding into or around the brain.~~

37 104142.5. ~~Nothing in this article shall preempt the authority
38 of facilities or individuals providing diagnostic or treatment
39 services to patients with stroke to maintain their own facility-based
40 stroke registries.~~

1 ~~104143. This article shall not be construed as a medical practice~~
2 ~~guideline and shall not be used to restrict the authority of a hospital~~
3 ~~to provide services for which it has received a license under state~~
4 ~~law.~~
5 ~~104143.5. This article shall be implemented only to the extent~~
6 ~~funds from federal or private sources are made available for this~~
7 ~~purpose.~~
8 ~~104144. All contracts with, and the utilization of, the program's~~
9 ~~fiscal intermediary shall not be subject to Part 2 (commencing with~~
10 ~~Section 10100) of Division 2 of the Public Contract Code.~~