

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 408

Introduced by Senator Hernandez

February 16, 2011

An act to amend Section 1265 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 408, as amended, Hernandez. Health facilities: licensure.

Existing law provides for the licensure and regulation of health facilities administered by the State Department of Public Health. A violation of these provisions is a crime.

Existing law requires those desiring a license for a health facility, approval for a specified special service, or approval to manage a specified type of licensed health facility, that have not filed an application for a license to operate that facility, to file with the department a verified application on forms prescribed and furnished by the department, containing specified information.

Existing law provides that any requirement placed upon, or reference to, a corporation in the provisions regulating health facilities shall also apply to a limited liability company.

This bill would require a new license application to be filed when the holder of an existing license *for a health facility, as defined*, changes ownership. This bill would provide that a change of ownership occurs whenever the current holder of the license sells, transfers, leases, exchanges, options, conveys, or otherwise disposes of, a material amount of its assets or operations, as provided, to another individual or entity. This bill would provide that a change of ownership also occurs whenever the current holder of the license transfers control, responsibility, or

governance, as prescribed, of a material amount of its assets or operations, as provided, to another individual or entity.

Because this bill expands 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.

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. Section 1265 of the Health and Safety Code is
2 amended to read:

3 1265. (a) Any person, political subdivision of the state, or
4 governmental agency desiring a license for a health facility,
5 approval for a special service under this chapter, or approval to
6 manage a health facility currently licensed as a health facility, as
7 defined in subdivision (a), (b), (c), (d), or (f) of Section 1250, that
8 has not filed an application for a license to operate that facility
9 shall file with the department a verified application on forms
10 prescribed and furnished by the department, containing all of the
11 following:

12 (1) The name of the applicant and, if an individual, whether the
13 applicant has attained the age of 18 years.

14 (2) The type of facility or health facility.

15 (3) The location thereof.

16 (4) The name of the person in charge thereof.

17 (5) Evidence satisfactory to the department that the applicant
18 is of reputable and responsible character. If the applicant is a firm,
19 association, organization, partnership, business trust, corporation,
20 or company, like evidence shall be submitted as to the members
21 or shareholders thereof, and the person in charge of the health
22 facility for which application for license is made. If the applicant
23 is a political subdivision of the state or other governmental agency,
24 like evidence shall be submitted as to the person in charge of the
25 health facility for which application for license is made.

1 (6) Evidence satisfactory to the department of the ability of the
2 applicant to comply with this chapter and of rules and regulations
3 promulgated under this chapter by the department.

4 (7) Evidence satisfactory to the department that the applicant
5 to operate a skilled nursing facility or intermediate care facility
6 possesses financial resources sufficient to operate the facility for
7 a period of at least 45 days. A management company shall not be
8 required to submit this information.

9 (8) Each applicant for a license to operate a skilled nursing
10 facility or intermediate care facility shall disclose to the department
11 evidence of the right to possession of the facility at the time the
12 application will be granted, which may be satisfied by the
13 submission of a copy of applicable portions of a lease agreement
14 or deed of trust. The names and addresses of any persons or
15 organizations listed as owner of record in the real estate, including
16 the buildings and the grounds appurtenant to the buildings, shall
17 be disclosed to the department.

18 (9) Any other information as may be required by the department
19 for the proper administration and enforcement of this chapter.

20 (10) Upon submission of an application to the department by
21 an intermediate care facility/developmentally disabled habilitative
22 or an intermediate care facility/developmentally disabled-nursing,
23 the application shall include a statement of need signed by the
24 chairperson of the area board pursuant to Chapter 4 (commencing
25 with Section 4570) of Division 4.5 of the Welfare and Institutions
26 Code. In the event the area board has not provided the statement
27 of need within 30 days of receipt of the request from the applicant,
28 the department may process the application for license without the
29 statement.

30 (11) The information required pursuant to this section, other
31 than individuals' social security numbers, shall be made available
32 to the public upon request, and shall be included in the
33 department's public file regarding the facility.

34 (12) With respect to a facility licensed as a health facility, as
35 defined in subdivision (a), (b), or (f) of Section 1250, for purposes
36 of this section, "manage" means to assume operational control of
37 the facility.

38 (b) A new license application shall be filed when the holder of
39 an existing license *for a health facility, as defined in subdivision*

1 (a), (b), or (f) of Section 1250, changes ownership. A change of
2 ownership occurs whenever the current holder of the license:

3 (1) Sells, transfers, leases, exchanges, options, conveys, or
4 otherwise disposes of, a material amount of its assets or operations
5 to another individual or entity.

6 (2) Transfers control, responsibility, or governance of a material
7 amount of ~~its assets or operations~~ *the assets or operations of the*
8 *current licenseholder* to another individual or entity.

9 (c) An agreement or transaction involves a “material amount
10 of the assets or operations” pursuant to paragraph (1) of subdivision
11 (b) if either:

12 (1) The agreement or transaction directly affects more than 10
13 percent of the value of the health facility, ~~or facilities~~, as defined
14 in subdivision (a), (b), or (f) of Section 1250, that provide similar
15 health care ~~and that are operated or controlled by the current license~~
16 ~~holder~~ *licenseholder*, or

17 (2) The agreement or transaction involves the sale, transfer,
18 exchange, change in control, governance, or otherwise disposes
19 of any health facility, ~~or facilities~~, as defined in subdivision (a),
20 (b), or (f) of Section 1250, that ~~provide~~ *provides* similar health
21 care and that ~~are~~ *is* controlled, operated, or managed by the current
22 ~~license holder~~ *licenseholder* and that ~~have~~ *has* a fair market value
23 that exceeds three million dollars (\$3,000,000).

24 (d) An agreement or transaction will “transfer control,
25 responsibility, or governance” pursuant to paragraph (2) of
26 subdivision (b) if any of the following occurs:

27 (1) There is a transfer, assignment, or disposition of 10 percent
28 or more of the membership interests or voting rights of a limited
29 liability company or partnership which operates or manages a
30 licensed health facility, as defined in subdivision (a), (b), or (f) of
31 Section 1250, to a new partner or member that did not hold 10
32 percent or more of the membership interests or voting rights at the
33 time the existing license was issued to the limited liability company
34 or partnership.

35 (2) There is a transfer, assignment, or disposition of 10 percent
36 or more of the stock or voting rights of a corporation which
37 operates or manages a licensed health facility, or which is a
38 member of a limited liability company that operates or manages
39 a licensed health facility, as defined in subdivision (a), (b), or (f)
40 of Section 1250, to a new stockholder that did not hold 10 percent

1 or more of the stock or voting rights at the time the existing license
2 was issued to the corporation.

3 (3) There is a substitution of a new corporate member or
4 members that transfers the control of, responsibility for, or
5 governance of, the current ~~license holder~~ *licenseholder*.

6 (4) There is a substitution of one or more members of the
7 governing body, or any arrangement, written or oral, that would
8 transfer voting control of the members of the governing body.

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