

AMENDED IN SENATE JUNE 15, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY MAY 6, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2171

Introduced by Assembly Member Wieckowski
(Coauthor: Assembly Member Yamada)
(Coauthor: Senator Leno)

February 20, 2014

An act to amend Section 1569.886 of, to add Article 2.5 (commencing with Section 1569.261) to Chapter 3.2 of Division 2 of, ~~and to add Section 1569.275 to,~~ the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2171, as amended, Wieckowski. Residential care facilities for the elderly.

Existing law, the 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 requires that an admission agreement for a residential care facility for the elderly explain the resident's right to notice prior to an involuntary transfer, discharge, or eviction, as specified. A violation of these provisions is a misdemeanor.

This bill would establish specified rights for residents of residential care facilities for the elderly, including, among other things, to receive

90 days’ notice before an involuntary transfer, discharge, or eviction, to be accorded dignity in their personal relationships with staff, to be granted a reasonable level of personal privacy of accommodations, medical treatment, personal care and assistance, and to confidential treatment of their records and personal information, as specified. The bill would require, at admission, a facility staff person to personally advise a resident and the resident’s representative, as described, of these and other specified rights and to provide them with a written copy. The bill would authorize the department to assess civil penalties, pursuant to specified provisions, for a violation of these rights, and would provide that a licensee who violates these rights may be prosecuted by the Attorney General in a civil action for an injunction or civil damages, or both. The bill would also authorize a former or current resident of a residential care facility for the elderly to bring a civil action against any facility that violates these rights, but would require the resident to provide the facility alleged to have violated any of the rights described above with a specified written notice at least 30 days prior to the commencement of the action. The bill would prohibit the maintenance of an action for damages if the facility alleged to have violated these rights ceases, corrects, or otherwise rectifies the alleged violation within 30 days of the written notice.

By expanding the scope of a 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. Article 2.5 (commencing with Section 1569.261)
- 2 is added to Chapter 3.2 of Division 2 of the Health and Safety
- 3 Code, to read:

1 Article 2.5. Resident’s Bill of Rights

2
3 1569.261. (a) It is the intent of the Legislature in enacting this
4 article to adopt fundamental rights for all persons residing in a
5 residential care facility for the elderly, as defined in Section 1569.2,
6 to ensure that facilities respect and promote these rights, and to
7 provide residents the ability to enforce their rights.

8 (b) In establishing this bill of rights, the Legislature intends that
9 persons residing in residential care facilities for the elderly be
10 treated with dignity, kindness, and respect, and that their civil
11 liberties be fully honored.

12 (c) A central purpose of the bill of rights is to strengthen a
13 resident’s right to make choices about his or her care, treatment,
14 and daily life in the facility and to ensure that the resident’s choices
15 are respected. The Legislature intends to enhance each resident’s
16 autonomy and ability to make decisions concerning his or her life.

17 (d) The Legislature also intends that each residential care facility
18 for the elderly provide a safe, comfortable, and homelike
19 environment for its residents and that it protect residents from any
20 type of physical or mental abuse, neglect, restraint, exploitation,
21 or endangerment.

22 1569.265. Rights and liberties set forth in this article do not
23 diminish a resident’s constitutional rights or any other rights set
24 forth in other state or federal laws and regulations. Persons residing
25 in residential care facilities for the elderly shall continue to enjoy
26 all of their civil and legal rights.

27 1569.267. (a) At admission, a facility staff person shall
28 personally advise a resident and the resident’s representative of,
29 and give a complete written copy of, the rights in this article and
30 the personal rights in Section 87468 of Title 22 of the California
31 Code of Regulations. The licensee shall have each resident and
32 the resident’s representative sign a copy of the resident’s rights,
33 and the licensee shall include the signed copy in the resident’s
34 record.

35 (b) Facilities shall prominently post, in areas accessible to the
36 residents and their representatives, a copy of the residents’ rights.

37 (c) The rights posted pursuant to subdivision (b) shall be posted
38 both in English and in any other language in a facility where 5
39 percent or more of the residents can only read that other language.

- 1 (d) The facility shall provide initial and ongoing training for all
2 members of its staff to ensure that residents' rights are fully
3 respected and implemented.
- 4 1569.269. (a) Residents shall have all of the following rights:
- 5 (1) To be accorded dignity in their personal relationships with
6 staff, residents, and other persons.
- 7 (2) To be granted a reasonable level of personal privacy in
8 accommodations, medical treatment, personal care and assistance,
9 visits, communications, telephone conversations, use of the
10 Internet, and meetings of resident and family groups.
- 11 (3) To confidential treatment of their records and personal
12 information and to approve their release, except as authorized by
13 law.
- 14 (4) To be encouraged and assisted in exercising their rights as
15 citizens and as residents of the facility. Residents shall be free
16 from interference, coercion, discrimination, and retaliation in
17 exercising their rights.
- 18 (5) To be accorded a safe and habitable environment.
- 19 (6) To care, supervision, and services that meet their individual
20 needs and is delivered by staff that are sufficient in numbers,
21 qualifications, and competency to meet their needs.
- 22 (7) To be served food of the quality and in the quantity necessary
23 to meet their nutritional needs.
- 24 (8) To make choices concerning their daily life in the facility.
- 25 (9) To fully participate in planning their care, including the right
26 to attend and participate in meetings or communications regarding
27 the care and services to be provided in accordance with Section
28 1569.80, and to involve persons of their choice in the planning
29 process. The facility shall provide necessary information and
30 support to ensure that residents direct the process to the maximum
31 extent possible, and are enabled to make informed decisions and
32 choices.
- 33 (10) To be free from neglect, financial exploitation, involuntary
34 seclusion, punishment, humiliation, intimidation, and verbal,
35 mental, physical, or sexual abuse.
- 36 (11) To present grievances and recommend changes in policies,
37 procedures, and services to the staff of the facility, the facility's
38 management and governing authority, and to any other person
39 without restraint, coercion, discrimination, reprisal, or other

1 retaliatory actions. The licensee shall take prompt actions to resolve
2 residents' grievances.

3 (12) To contact the State Department of Social Services, the
4 long-term care ombudsman, or both, regarding grievances against
5 the facility. The facility shall post the telephone numbers and
6 addresses for the local offices of the State Department of Social
7 Services and ombudsman program, in accordance with Section
8 9718 of the Welfare and Institutions Code, conspicuously in the
9 facility foyer, lobby, residents' activity room, or other location
10 easily accessible to residents.

11 (13) To be fully informed, as evidenced by the resident's written
12 acknowledgement, prior to or at the time of admission, of all rules
13 governing residents' conduct and responsibilities. In accordance
14 with Section 1569.885, all rules established by a facility shall be
15 reasonable and shall not violate any rights set forth in this chapter
16 or in other applicable laws or regulations.

17 (14) To receive in the admission agreement a comprehensive
18 description of the method for evaluating residents' service needs
19 and the fee schedule for the items and services provided, and to
20 receive written notice of any rate increases pursuant to Sections
21 1569.655 and 1569.884.

22 (15) To be informed in writing at or before the time of admission
23 of any resident retention limitations set by the state or facility,
24 including any limitations or restrictions on the facility's ability to
25 meet residents' needs.

26 (16) To reasonable accommodation of individual needs and
27 preferences in all aspects of life in the facility, except when the
28 health or safety of the individual or other residents would be
29 endangered.

30 (17) To reasonable accommodation of resident preferences
31 concerning room and roommate choices.

32 (18) To written notice of any room changes at least 30 days in
33 advance unless the request for a change is initiated by a resident,
34 required to fill a vacant bed, or necessary due to an emergency.

35 (19) To share a room with the resident's spouse, domestic
36 partner, or a person of resident's choice when both spouses,
37 partners, or residents live in the same facility and consent to the
38 arrangement.

39 (20) To select their own physicians, pharmacies, privately paid
40 personal assistants, hospice agency, and health care providers.

- 1 (21) To have prompt access to review all of their records and
- 2 to purchase photocopies. Photocopied records shall be promptly
- 3 provided, not to exceed two business days, at a cost not to exceed
- 4 the community standard for photocopies.
- 5 (22) To be protected from involuntary transfers, discharges, and
- 6 evictions in violation of state laws and regulations. Facilities shall
- 7 not involuntarily transfer or evict residents for grounds other than
- 8 those specifically enumerated under state law or regulations, and
- 9 shall comply with enumerated eviction and relocation protections
- 10 for residents. A facility shall provide 90 days’ notice to a resident
- 11 prior to involuntarily transfer, discharge, or eviction. For purposes
- 12 of this paragraph, “involuntary” means a transfer, discharge, or
- 13 eviction that is initiated by the facility, not by the resident.
- 14 (23) To move from the facility.
- 15 (24) To have relatives and other individuals of the resident’s
- 16 choosing visit at any time, subject to the resident’s right to
- 17 withdraw consent.
- 18 (25) To receive written information on the right to establish an
- 19 advanced health care directive and, pursuant to Section 1569.156,
- 20 the facility’s written policies on honoring those directives.
- 21 (26) To be encouraged to maintain and develop their fullest
- 22 potential for independent living through participation in activities
- 23 that are designed and implemented for this purpose, in accordance
- 24 with Section 87219 of Title 22 of the California Code of
- 25 Regulations.
- 26 (27) To organize and participate in a resident council that is
- 27 established pursuant to Section 1569.157.
- 28 (28) To protection of their property from theft or loss in
- 29 accordance with Sections 1569.152, 1569.153, and 1569.154.
- 30 (29) To manage their financial affairs. The facility shall not
- 31 require residents to deposit their personal funds with the facility.
- 32 No licensee or employee of a facility shall become or act as a
- 33 representative payee for any payments made to a resident, if the
- 34 resident or the resident’s representative objects. No licensee or
- 35 employee of a facility shall serve as agent for a resident under a
- 36 power of attorney.
- 37 (b) A licensed residential care facility for the elderly shall not
- 38 discriminate against a person seeking admission or a resident based
- 39 on sex, race, color, religion, national origin, marital status,

1 registered domestic partner status, ancestry, actual or perceived
2 sexual orientation, or actual or perceived gender identity.

3 (c) No provision of a contract of admission, including all
4 documents that a resident or his or her representative is required
5 to sign at the time of, or as a condition of, admission to a residential
6 care facility for the elderly, shall require that a resident waive
7 benefits or rights to which he or she is entitled under this chapter
8 or provided by federal or other state law or regulation.

9 (d) Residents' family members, friends, and representatives
10 have the right to organize and participate in a family council that
11 is established pursuant to Section 1569.158.

12 (e) The department may assess civil penalties pursuant to Section
13 1569.49 for a violation of a right specified in this section.

14 1569.271. (a) Thirty days or more before the commencement
15 of an action for damages pursuant to Section 1569.275, the resident
16 or the resident's representative shall do both of the following:

17 (1) Notify the facility alleged to have violated any requirements
18 of this article of the particular alleged violation.

19 (2) Demand that the facility cease, correct, or otherwise rectify
20 the alleged violation.

21 The notice shall be in writing and shall be sent by certified or
22 registered mail, return receipt requested, to the residential care
23 facility in which the resident resides or resided or to the person's
24 principal place of business within California.

25 (b) Except as provided in subdivision (c), no action for damages
26 may be maintained under Section 1569.275 if the facility ceases,
27 corrects, or otherwise rectifies the alleged violation within 30 days
28 after receipt of the notice.

29 (c) No action for damages may be maintained under Section
30 1569.275 upon a showing by a facility alleged to have violated
31 any requirements of this article that all of the following exist:

32 (1) All residents similarly situated have been identified, or a
33 reasonable effort to identify those other residents has been made.

34 (2) All residents so identified have been notified that the facility
35 will cease, correct, or otherwise rectify the practices, acts, or
36 methods alleged to be in violation.

37 (3) The facility has ceased from engaging, or if immediate
38 cessation is impossible or unreasonably expensive under the
39 circumstances, the person will, within a reasonable time, cease to
40 engage, in the alleged violation.

1 (d) An action for injunctive relief brought under the specific
2 provisions of Section 1568.275 may be commenced without
3 compliance with subdivision (a). Not less than 30 days after the
4 commencement of an action for injunctive relief, and after
5 compliance with subdivision (a), the resident may amend his or
6 her complaint without leave of court to include a request for
7 damages. The appropriate provisions of subdivision (b) or (c) shall
8 be applicable if the complaint for injunctive relief is amended to
9 request damages.

10 (e) Attempts to comply with this section by a facility receiving
11 a demand shall be construed to be an offer to compromise and
12 shall be inadmissible as evidence pursuant to Section 1152 of the
13 Evidence Code. Furthermore, these attempts to comply with a
14 demand shall not be considered an admission of engaging in an
15 act or practice declared unlawful under this article. Evidence of
16 compliance or attempts to comply with this section may be
17 introduced by a defendant for the purpose of establishing good
18 faith or to show compliance with this section.

19 *1569.275. (a) (1) An action for injunction or civil damages,*
20 *or both, against a residential care facility for the elderly that*
21 *violates any provision of this article may be prosecuted by the*
22 *Attorney General in the name of the people of the State of*
23 *California upon his or her own complaint or upon the complaint*
24 *of a board, officer, person, corporation, or association, or by a*
25 *person acting for the interests of itself, its members, or the general*
26 *public.*

27 *(2) Every facility shall provide access to the Office of the*
28 *Attorney General during normal business hours or at any time*
29 *when the suspected violation presents an immediate or substantial*
30 *threat to the physical health, mental health, or safety of a resident.*

31 *(3) The amount of civil damages that may be recovered in an*
32 *action brought by the Attorney General shall not exceed the*
33 *maximum amount of civil penalties that could be assessed on*
34 *account of the violation or violations provided for in paragraph*
35 *(2) of subdivision (b).*

36 *(4) A licensee who violates any provision of this article or*
37 *regulations adopted by the department pursuant to this article,*
38 *and whose violation presents an immediate or substantial threat*
39 *to the physical health, mental health, or safety of a resident of a*
40 *residential care facility for the elderly may be enjoined from*

1 *permitting the violation to continue and may be sued for civil*
2 *damages within a court of competent jurisdiction.*

3 *(b) (1) A current or former resident of a residential care facility*
4 *for the elderly, as defined in subdivision (k) of Section 1569.2, may*
5 *bring a civil action against any facility that violates any*
6 *requirements of this article. The suit shall be brought in a court*
7 *of competent jurisdiction. The licensee shall be liable for the acts*
8 *of the licensee's employees.*

9 *(2) The licensee shall be liable for up to five hundred dollars*
10 *(\$500) for each violation, and for costs and attorney's fees, and*
11 *may be enjoined from permitting the violation to continue.*
12 *Injunctive relief granted under this section shall not be stayed*
13 *pending appeal.*

14 *(3) The statute of limitations for suit under this subdivision shall*
15 *be three years, which shall not begin to run until the violation has*
16 *been discovered.*

17 *(4) The current or former resident has the right to a trial by*
18 *jury.*

19 *(5) The right to bring a civil action shall survive the death of*
20 *the resident.*

21 *(6) An agreement by a resident of a residential care facility for*
22 *the elderly to waive his or her rights to sue pursuant to this*
23 *subdivision shall be deemed contrary to public policy and shall*
24 *be void and unenforceable.*

25 *(c) The right to bring a civil action against any person or entity*
26 *for a violation of this article shall be subject to the requirements*
27 *of Section 1569.271.*

28 *(d) The remedies specified in this section shall be in addition*
29 *to any other remedy provided by law.*

30 ~~SEC. 2.— Section 1569.275 is added to Article 2.5 (commencing~~
31 ~~with Section 1569.261) of Chapter 3.2 of Division 2 of the Health~~
32 ~~and Safety Code, immediately following Section 1569.271, to~~
33 ~~read:~~

34 ~~1569.275. (a) A licensee who violates any provision of this~~
35 ~~article or regulations adopted by the department pursuant to this~~
36 ~~article, and whose violation presents an immediate or substantial~~
37 ~~threat to the physical health, mental health, or safety of a resident~~
38 ~~of a residential care facility for the elderly may be enjoined from~~
39 ~~permitting the violation to continue and may be sued for civil~~
40 ~~damages within a court of competent jurisdiction. An action for~~

1 injunction or civil damages, or both, may be prosecuted by the
2 Attorney General in the name of the people of the State of
3 California upon his or her own complaint or upon the complaint
4 of a board, officer, person, corporation, or association, or by a
5 person acting for the interests of itself, its members, or the general
6 public. The amount of civil damages that may be recovered in an
7 action brought pursuant to this section shall not exceed the
8 maximum amount of civil penalties that could be assessed on
9 account of the violation or violations. The licensee shall be liable
10 for costs and attorney's fees if the plaintiff prevails in an action
11 pursuant to this subdivision.

12 ~~(b) (1) A current or former resident of a residential care facility~~
13 ~~for the elderly, as defined in subdivision (k) of Section 1569.2,~~
14 ~~may bring a civil action against any facility that violates any~~
15 ~~requirements of this article. The suit shall be brought in a court of~~
16 ~~competent jurisdiction. The licensee shall be liable for the acts of~~
17 ~~the licensee's employees. The licensee shall be liable for up to five~~
18 ~~hundred dollars (\$500) for each violation, and for costs and~~
19 ~~attorney's fees, and may be enjoined from permitting the violation~~
20 ~~to continue. Injunctive relief granted under this section shall be~~
21 ~~deemed prohibitory, and shall not be stayed pending appeal. The~~
22 ~~statute of limitations for suit under this subdivision shall be three~~
23 ~~years, which shall not begin to run until the violation has been~~
24 ~~discovered. The current or former resident has the right to a trial~~
25 ~~by jury. The right to bring a civil action shall survive the death of~~
26 ~~the resident. An agreement by a resident of a residential care~~
27 ~~facility for the elderly to waive his or her rights to sue pursuant to~~
28 ~~this subdivision shall be deemed contrary to public policy and shall~~
29 ~~be void and unenforceable.~~

30 ~~(2) The right to bring a civil action against any person or entity~~
31 ~~for a violation of this article shall be subject to the requirements~~
32 ~~of Section 1569.271.~~

33 ~~(e) The remedies specified in this section shall be in addition~~
34 ~~to any other remedy provided by law.~~

35 ~~SEC. 3.~~

36 ~~SEC. 2. Section 1569.886 of the Health and Safety Code is~~
37 ~~amended to read:~~

38 ~~1569.886. (a) The admission agreement shall not include any~~
39 ~~ground for involuntary transfer or eviction of the resident unless~~

1 those grounds are specifically enumerated under state law or
2 regulation.

3 (b) The admission agreement shall list the justifications for
4 eviction permissible under state law or regulation, exactly as they
5 are worded in the applicable law or regulation.

6 (c) The admission agreement shall include an explanation of
7 the resident's right to 90 days' notice prior to an involuntary
8 transfer, discharge, or eviction, the process by which the resident
9 may appeal the decision and a description of the relocation
10 assistance offered by the facility.

11 (d) The admission agreement shall state the responsibilities of
12 the licensee and the rights of the resident when a facility evicts
13 residents pursuant to Section 1569.682.

14 ~~SEC. 4.~~

15 *SEC. 3.* No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.