

AMENDED IN SENATE AUGUST 20, 2014

AMENDED IN SENATE JUNE 26, 2014

AMENDED IN ASSEMBLY MAY 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2386

Introduced by Assembly Member Mullin

February 21, 2014

An act to amend Sections ~~1569.150, 1596.95, 1597.45, 1597.46, and 1597.54~~ *1597.45 and 1597.46* of, and to add Sections 1503.2, 1568.043, ~~and 1569.311, 1596.954, and 1597.543~~ to, the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2386, as amended, Mullin. Care facilities: carbon monoxide detectors.

Existing law provides for the licensing and regulation of community care facilities, including residential facilities, adult day programs, foster family homes, community treatment facilities, and others, and for the licensing and regulation of residential care facilities for the elderly and residential care facilities for persons with chronic, life-threatening illness, by the State Department of Social Services. Violation of the provisions relating to residential care facilities for the elderly and residential care facilities for persons with chronic, life-threatening illness is a misdemeanor. Existing law also provides for the licensing and regulation of day care centers and family day care homes by the department. Existing law requires day care centers and family day care homes to have specified fire prevention devices.

This bill would require community care facilities, residential care facilities for the elderly, residential care facilities for persons with chronic, life-threatening illness, and day care centers and family day care homes to have one or more functioning carbon monoxide detectors that meet specified statutory requirements in the facility and would require the department to account for the presence of the detectors during inspections. By creating a new crime, with respect to residential care facilities for the elderly and residential care facilities for persons with chronic, life-threatening illness, 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. Section 1503.2 is added to the Health and Safety
2 Code, to read:

3 1503.2. Every facility licensed or certified pursuant to this
4 chapter shall have one or more carbon monoxide detectors in the
5 facility that meet the standards established in Chapter 8
6 (commencing with Section 13260) of Part 2 of Division 12. The
7 department shall account for the presence of these detectors during
8 inspections.

9 SEC. 2. Section 1568.043 is added to the Health and Safety
10 Code, to read:

11 1568.043. A residential care facility for persons with chronic,
12 life-threatening illness shall have one or more carbon monoxide
13 detectors in the facility that meet the standards established on
14 Chapter 8 (commencing with Section 13260) of Part 2 of Division
15 12. The department shall account for the presence of these detectors
16 during inspections.

17 ~~SEC. 3. Section 1569.150 of the Health and Safety Code is~~
18 ~~amended to read:~~

19 ~~1569.150. (a) The department and the licensing agencies with~~
20 ~~which it contracts for licensing shall review and make a final~~

1 ~~determination within 60 days of an applicant's submission of a~~
2 ~~complete application on all applications for a license to operate a~~
3 ~~residential care facility for the elderly if the applicant possesses a~~
4 ~~current valid license to operate a residential care facility for the~~
5 ~~elderly at another site. Applicants shall note on the application, or~~
6 ~~in a cover letter with the application, that they possess a current~~
7 ~~valid license at another site, and the number of that license.~~

8 ~~(b) The department shall request a fire safety clearance from~~
9 ~~the appropriate fire marshal within five days of receipt of an~~
10 ~~application described in subdivision (a). The applicant shall be~~
11 ~~responsible for requesting and obtaining the required criminal~~
12 ~~record clearances. The applicant shall also provide evidence~~
13 ~~satisfactory to the department that there is one or more functioning~~
14 ~~carbon monoxide detectors in the facility that meet the standards~~
15 ~~established in Chapter 8 (commencing with Section 13260) of Part~~
16 ~~2 of Division 12.~~

17 ~~(c) If the department for any reason is unable to comply with~~
18 ~~subdivision (a), it shall, within 60 days of receipt of the application~~
19 ~~described in subdivision (a), grant a provisional license to the~~
20 ~~applicant to operate for a period not to exceed six months, except~~
21 ~~as provided in subdivision (d). While the provisional license is in~~
22 ~~effect, the department shall continue its investigation and make a~~
23 ~~final determination on the application before the provisional license~~
24 ~~expires. The provisional license shall be granted, provided the~~
25 ~~department knows of no life safety risks, the criminal records~~
26 ~~clearances, if applicable, are complete, and the fire safety clearance~~
27 ~~is complete. The director may extend the term of a provisional~~
28 ~~license for an additional six months at the time of the application,~~
29 ~~if the director determines that more than six months will be~~
30 ~~required to achieve full compliance with licensing standards due~~
31 ~~to circumstances beyond the control of the applicant, and if all~~
32 ~~other requirements for a license have been met.~~

33 ~~(d) If the department does not issue a provisional license~~
34 ~~pursuant to subdivision (c), the department shall issue a notice to~~
35 ~~the applicant identifying whether the provisional license has not~~
36 ~~been issued due to the existence of a life safety risk, lack of a fire~~
37 ~~safety clearance, lack of a criminal records clearance, failure to~~
38 ~~complete the application, or any combination of these reasons. If~~
39 ~~a life safety risk is identified, the risk preventing the issuance of~~
40 ~~the provisional license shall be clearly explained. If a lack of the~~

1 fire safety clearance is identified, the notice shall include the dates
 2 on which the department requested the clearance and the current
 3 status of that request, and the fire marshal's name and telephone
 4 number to whom a fire safety clearance request was sent. The
 5 department shall identify the names of individuals for whom
 6 criminal records clearances are lacking. If failure to complete the
 7 application is identified, the notice shall list all of the forms or
 8 attachments that are missing or incorrect. This notice shall be sent
 9 to the applicant no later than 60 days after the applicant filed the
 10 application. If the reasons identified in the notice are corrected,
 11 the department shall issue the provisional license within five days
 12 after the corrections are made.

13 (e) ~~The department shall, immediately after January 1, 1993,~~
 14 ~~develop expedited procedures necessary to implement subdivisions~~
 15 ~~(a), (b), (c), and (d).~~

16 (f) ~~The department shall, immediately after January 1, 1993,~~
 17 ~~develop an appeal procedure for applicants under this section for~~
 18 ~~both denial of licenses and delay in processing applications.~~

19 ~~SEC. 4.~~

20 *SEC. 3.* Section 1569.311 is added to the Health and Safety
 21 Code, to read:

22 1569.311. Every residential care facility for the elderly shall
 23 have one or more carbon monoxide detectors in the facility that
 24 meet the standards established in Chapter 8 (commencing with
 25 Section 13260) of Part 2 of Division 12. The department shall
 26 account for the presence of these detectors during inspections.

27 ~~SEC. 5.~~ Section 1596.95 of the Health and Safety Code is
 28 amended to read:

29 1596.95. Any person desiring issuance of a license for a day
 30 care center or a special permit for specialized services in a day
 31 care center under this chapter shall file with the department
 32 pursuant to regulations, an application on forms, furnished by the
 33 department, that shall include, but not be limited to, all of the
 34 following:

35 (a) ~~Evidence satisfactory to the department of the ability of the~~
 36 ~~applicant to comply with this act and rules and regulations adopted~~
 37 ~~pursuant to this act by the department.~~

38 (b) ~~Evidence satisfactory to the department that the applicant~~
 39 ~~is a reputable and responsible character. This evidence shall~~
 40 ~~include, but not be limited to, a criminal record clearance pursuant~~

1 to Section 1596.871, employment history, and character references.
2 If the applicant is a firm, association, organization, partnership,
3 business trust, corporation, or company, evidence of reputable and
4 responsible character shall be submitted as to the members or
5 shareholders thereof, and the person in charge of the day care
6 center for which application for issuance of a license or special
7 permit is made.

8 (e) Evidence satisfactory to the department that the applicant
9 has sufficient financial resources to maintain the standards of
10 service required by regulations adopted pursuant to this act. The
11 information shall be required only upon initial application for
12 licensure, and when requested by the department, in writing,
13 explaining the need for the evidence as part of the department's
14 investigative function.

15 (d) Disclosure of the applicant's prior or present service as an
16 administrator, general partner, corporate officer, or director of, or
17 as a person who has held or holds a beneficial ownership of 10
18 percent or more in a child day care facility or in a facility licensed
19 pursuant to Chapter 1 (commencing with Section 1200), 2
20 (commencing with Section 1250), or 3 (commencing with Section
21 1500).

22 (e) Disclosure of a revocation or other disciplinary action taken,
23 or in the process of being taken, against a license held or previously
24 held by the entities specified in subdivision (d).

25 (f) Evidence satisfactory to the department that there is a fire
26 escape and disaster plan for the facility and that fire drills and
27 disaster drills will be conducted at least once every six months.
28 The documentation of these drills shall be maintained at the facility
29 on a form prepared by the department and shall include the date
30 and time of the drills.

31 (g) Evidence satisfactory to the department that there is one or
32 more functioning carbon monoxide detectors in the facility that
33 meet the standards established in Chapter 8 (commencing with
34 Section 13260) of Part 2 of Division 12. The department shall
35 account for the presence of the detectors during inspections.

36 (h) Evidence satisfactory to the department that the applicant
37 has posted signs at the point of entry to the facility that provide
38 the telephone number of the local health department and state all
39 of the following:

40 (1) Protect your child—it is the law.

1 ~~(2) All the information specified in Sections 27360 and 27360.5~~
2 ~~of the Vehicle Code regarding child passenger restraint systems.~~

3 ~~(3) Call your local health department for more information.~~

4 ~~(i) Any other information required by the department for the~~
5 ~~proper administration and enforcement of this act.~~

6 ~~(j) Failure of the applicant to cooperate with the licensing agency~~
7 ~~in the completion of the application shall result in the denial of the~~
8 ~~application. Failure to cooperate means that the information~~
9 ~~described in this section and in regulations of the department has~~
10 ~~not been provided, or not provided in the form requested by the~~
11 ~~licensing agency, or both.~~

12 *SEC. 4. Section 1596.954 is added to the Health and Safety*
13 *Code, to read:*

14 *1596.954. Every licensed child day care center shall have one*
15 *or more carbon monoxide detectors in the facility that meet the*
16 *standards established in Chapter 8 (commencing with Section*
17 *13260) of Part 2 of Division 12. The department shall account for*
18 *the presence of these detectors during inspections.*

19 ~~SEC. 6.~~

20 *SEC. 5. Section 1597.45 of the Health and Safety Code is*
21 *amended to read:*

22 *1597.45. All of the following shall apply to small family day*
23 *care homes:*

24 (a) The use of a single-family residence as a small family day
25 care home shall be considered a residential use of property for the
26 purposes of all local ordinances.

27 (b) No local jurisdiction shall impose a business license, fee,
28 or tax for the privilege of operating a small family day care home.

29 (c) Use of a single-family dwelling for purposes of a small
30 family day care home shall not constitute a change of occupancy
31 for purposes of Part 1.5 (commencing with Section 17910) of
32 Division 13 (State Housing Law) or for purposes of local building
33 codes.

34 (d) A small family day care home shall not be subject to Article
35 1 (commencing with Section 13100) or Article 2 (commencing
36 with Section 13140) of Chapter 1 of Part 2 of Division 12, except
37 that a small family day care home shall contain a fire extinguisher
38 and smoke detector device that meet standards established by the
39 State Fire Marshal and one or more functioning carbon monoxide
40 detectors that meet the requirements of Chapter 8 (commencing

1 with Section 13260) of Part 2 of Division 12. The department shall
2 account for the presence of the carbon monoxide detectors during
3 inspections.

4 ~~SEC. 7.~~

5 *SEC. 6.* Section 1597.46 of the Health and Safety Code is
6 amended to read:

7 1597.46. All of the following shall apply to large family day
8 care homes:

9 (a) A city, county, or city and county shall not prohibit large
10 family day care homes on lots zoned for single-family dwellings,
11 but shall do one of the following:

12 (1) Classify these homes as a permitted use of residential
13 property for zoning purposes.

14 (2) Grant a nondiscretionary permit to use a lot zoned for a
15 single-family dwelling to a large family day care home that
16 complies with local ordinances prescribing reasonable standards,
17 restrictions, and requirements concerning spacing and
18 concentration, traffic control, parking, and noise control relating
19 to those homes, and complies with subdivision (e) and regulations
20 adopted by the State Fire Marshal pursuant to that subdivision.
21 Noise standards shall be consistent with local noise ordinances
22 implementing the noise element of the general plan and shall take
23 into consideration the noise level generated by children. The permit
24 issued pursuant to this paragraph shall be granted by the zoning
25 administrator or, if there is no zoning administrator, by the person
26 or persons designated by the planning agency to grant these
27 permits, upon the certification without a hearing.

28 (3) Require a large family day care home to apply for a permit
29 to use a lot zoned for single-family dwellings. The zoning
30 administrator or, if there is no zoning administrator, the person or
31 persons designated by the planning agency to handle the use
32 permits, shall review and decide the applications. The use permit
33 shall be granted if the large family day care home complies with
34 local ordinances, if any, prescribing reasonable standards,
35 restrictions, and requirements concerning the following factors:
36 spacing and concentration, traffic control, parking, and noise
37 control relating to those homes, and complies with subdivision (e)
38 and regulations adopted by the State Fire Marshal pursuant to that
39 subdivision. Noise standards shall be consistent with local noise
40 ordinances implementing the noise element of the general plan

1 and shall take into consideration the noise levels generated by
2 children. The local government shall process a required permit as
3 economically as possible.

4 Fees charged for review shall not exceed the costs of the review
5 and permit process. An applicant may request a verification of
6 fees, and the city, county, or city and county shall provide the
7 applicant with a written breakdown within 45 days of the request.
8 Beginning July 1, 2007, the application form for large family day
9 care home permits shall include a statement of the applicant's right
10 to request the written fee verification.

11 Not less than 10 days prior to the date on which the decision
12 will be made on the application, the zoning administrator or person
13 designated to handle the use permits shall give notice of the
14 proposed use by mail or delivery to all owners shown on the last
15 equalized assessment roll as owning real property within a 100-foot
16 radius of the exterior boundaries of the proposed large family day
17 care home. A hearing on the application for a permit issued
18 pursuant to this paragraph shall not be held before a decision is
19 made unless a hearing is requested by the applicant or other
20 affected person. The applicant or other affected person may appeal
21 the decision. The appellant shall pay the cost, if any, of the appeal.

22 (b) In connection with an action taken pursuant to paragraph
23 (2) or (3) of subdivision (a), a city, county, or city and county shall
24 do all of the following:

25 (1) Upon the request of an applicant, provide a list of the permits
26 and fees that are required by the city, county, or city and county,
27 including information about other permits that may be required
28 by other departments in the city, county, or city and county, or by
29 other public agencies. The city, county, or city and county shall,
30 upon request of an applicant, also provide information about the
31 anticipated length of time for reviewing and processing the permit
32 application.

33 (2) Upon the request of an applicant, provide information on
34 the breakdown of any individual fees charged in connection with
35 the issuance of the permit.

36 (3) If a deposit is required to cover the cost of the permit,
37 provide information to the applicant about the estimated final cost
38 to the applicant of the permit, and procedures for receiving a refund
39 from the portion of the deposit not used.

1 (c) A large family day care home shall not be subject to the
2 provisions of Division 13 (commencing with Section 21000) of
3 the Public Resources Code.

4 (d) Use of a single-family dwelling for the purposes of a large
5 family day care home shall not constitute a change of occupancy
6 for purposes of Part 1.5 (commencing with Section 17910) of
7 Division 13 (State Housing Law), or for purposes of local building
8 and fire codes.

9 (e) A large family day care home shall have one or more
10 functioning carbon monoxide detectors that meet the requirements
11 of Chapter 8 (commencing with Section 13260) of Part 2 of
12 Division 12. The department shall account for the presence of the
13 carbon monoxide detectors during inspections.

14 (f) Large family day care homes shall be considered as
15 single-family residences for the purposes of the State Uniform
16 Building Standards Code and local building and fire codes, except
17 with respect to any additional standards specifically designed to
18 promote the fire and life safety of the children in these homes
19 adopted by the State Fire Marshal pursuant to this subdivision.
20 The State Fire Marshal shall adopt separate building standards
21 specifically relating to the subject of fire and life safety in large
22 family day care homes, which shall be published in Title 24 of the
23 California Code of Regulations. These standards shall apply
24 uniformly throughout the state and shall include, but not be limited
25 to: (1) the requirement that a large family day care home contain
26 a fire extinguisher or smoke detector device, or both, that meets
27 standards established by the State Fire Marshal; (2) specification
28 as to the number of required exits from the home; and (3)
29 specification as to the floor or floors on which day care may be
30 provided. Enforcement of these provisions shall be in accordance
31 with Sections 13145 and 13146. No city, county, city and county,
32 or district shall adopt or enforce a building ordinance or local rule
33 or regulation relating to the subject of fire and life safety in large
34 family day care homes that is inconsistent with those standards
35 adopted by the State Fire Marshal, except to the extent the building
36 ordinance or local rule or regulation applies to single-family
37 residences in which day care is not provided.

38 (g) The State Fire Marshal shall adopt the building standards
39 required in subdivision (d) and any other regulations necessary to
40 implement this section.

1 ~~SEC. 8. Section 1597.54 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~1597.54. All family day care homes for children, shall apply~~
4 ~~for a license under this chapter, except that a home that on June~~
5 ~~28, 1981, had a valid and unexpired license to operate as a family~~
6 ~~day care home for children under other provisions of law shall be~~
7 ~~deemed to have a license under this chapter for the unexpired term~~
8 ~~of the license at which time a new license may be issued upon~~
9 ~~fulfilling the requirements of this chapter.~~

10 ~~An applicant for licensure as a family day care home for children~~
11 ~~shall file with the department, pursuant to its regulations, an~~
12 ~~application on forms furnished by the department, that shall~~
13 ~~include, but not be limited to, all of the following:~~

14 ~~(a) A brief statement confirming that the applicant is financially~~
15 ~~secure to operate a family day care home for children. The~~
16 ~~department shall not require any other specific or detailed financial~~
17 ~~disclosure.~~

18 ~~(b) (1) Evidence that the small family day care home contains~~
19 ~~a fire extinguisher or smoke detector device, or both, that meets~~
20 ~~standards established by the State Fire Marshal under subdivision~~
21 ~~(d) of Section 1597.45, or evidence that the large family day care~~
22 ~~home meets the standards established by the State Fire Marshal~~
23 ~~under subdivision (d) of Section 1597.46.~~

24 ~~(2) Evidence satisfactory to the department that there is a fire~~
25 ~~escape and disaster plan for the facility and that fire drills and~~
26 ~~disaster drills will be conducted at least once every six months.~~
27 ~~The documentation of these drills shall be maintained at the facility~~
28 ~~on a form prepared by the department and shall include the date~~
29 ~~and time of the drills.~~

30 ~~(3) Evidence satisfactory to the department that there is one or~~
31 ~~more functioning carbon monoxide detectors in the facility that~~
32 ~~meet the standards of Chapter 8 (commencing with Section 13260)~~
33 ~~of Part 2 of Division 12. The department shall account for the~~
34 ~~presence of the detectors during inspections.~~

35 ~~(c) The fingerprints of any applicant of a family day care home~~
36 ~~license, and any other adult, as required under subdivision (b) of~~
37 ~~Section 1596.871.~~

38 ~~(d) Evidence of a current tuberculosis clearance, as defined in~~
39 ~~regulations that the department shall adopt, for any adult in the~~
40 ~~home during the time that children are under care.~~

1 ~~(e) Evidence satisfactory to the department of the ability of the~~
2 ~~applicant to comply with this chapter and Chapter 3.4 (commencing~~
3 ~~with Section 1596.70) and the regulations adopted pursuant to~~
4 ~~those chapters.~~

5 ~~(f) Evidence satisfactory to the department that the applicant~~
6 ~~and all other persons residing in the home are of reputable and~~
7 ~~responsible character. The evidence shall include, but not be limited~~
8 ~~to, a criminal record clearance pursuant to Section 1596.871,~~
9 ~~employment history, and character references.~~

10 ~~(g) Failure of the applicant to cooperate with the licensing~~
11 ~~agency in the completion of the application shall result in the denial~~
12 ~~of the application. Failure to cooperate means that the information~~
13 ~~described in this section and in regulations of the department has~~
14 ~~not been provided, or not provided in the form requested by the~~
15 ~~licensing agency, or both.~~

16 ~~(h) Other information as may be required by the department~~
17 ~~for the proper administration and enforcement of the act.~~

18 *SEC. 7. Section 1597.543 is added to the Health and Safety*
19 *Code, to read:*

20 *1597.543. Every family day care home for children shall have*
21 *one or more carbon monoxide detectors in the facility that meet*
22 *the standards established in Chapter 8 (commencing with Section*
23 *13260) of Part 2 of Division 12. The department shall account for*
24 *the presence of these detectors during inspections.*

25 ~~SEC. 9.~~

26 *SEC. 8. No reimbursement is required by this act pursuant to*
27 *Section 6 of Article XIII B of the California Constitution because*
28 *the only costs that may be incurred by a local agency or school*
29 *district will be incurred because this act creates a new crime or*
30 *infraction, eliminates a crime or infraction, or changes the penalty*
31 *for a crime or infraction, within the meaning of Section 17556 of*
32 *the Government Code, or changes the definition of a crime within*
33 *the meaning of Section 6 of Article XIII B of the California*
34 *Constitution.*