

AMENDED IN SENATE APRIL 9, 2014

AMENDED IN SENATE MARCH 26, 2014

AMENDED IN SENATE FEBRUARY 14, 2014

**SENATE BILL**

**No. 894**

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**Introduced by Senator Corbett**

January 13, 2014

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An act to amend ~~Section~~ *Sections 1569.335 and 1569.525* of the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

SB 894, as amended, Corbett. Residential care facilities for the elderly: revocation of license.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly. These provisions are administered by the State Department of Social Services. Violation of these provisions is a misdemeanor.

Existing law requires, if the Director of Social Services determines that it is necessary to temporarily suspend a license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department to make every effort to minimize trauma for the residents. Existing law authorizes and requires the department, in the event of a temporary license suspension or revocation, to comply with specified procedures relating to the transfer of residents, including requiring the department to contact and work with any local agency that may have placement or advocacy

responsibility for the residents of a residential care facility for the elderly, as specified, to locate alternative placement sites and contact responsible relatives. Existing law requires, upon an order to revoke a license, a licensee to provide a 60-day written notice of license revocation that may lead to closure to the resident and the resident's responsible person within 24 hours of receipt of the department's order of revocation. Existing law requires a resident who transfers from the facility during that 60-day period to be entitled to a refund of preadmission fees in accordance with specified provisions.

This bill would require, if the Director of Social Services determines at any time during ~~relocation of residents~~ *or following a temporary suspension or revocation of a license* ~~that it is necessary to protect there is a risk to the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety,~~ the department to take any necessary action to minimize trauma for the residents, including, but not limited to, ~~preparing~~ *arranging for the preparation of* the residents' records and medications for transfer and checking in on the status of each transferred resident within 24 hours of transfer. The bill would additionally require the department to contact the Office of the State Long-Term Care Ombudsman to locate alternative placement sites for residents. The bill would also require, upon an order to temporarily suspend a license or a final order to suspend a license, a licensee to provide a written notice of license suspension or revocation to the resident or resident's responsible person, as specified, and would require a resident who transfers due to the receipt of a notice of a temporary suspension or revocation of a license to be entitled to a refund of preadmission fees.

This bill would prohibit, upon receipt of an order to temporarily suspend or revoke a license, a licensee from accepting new residents or entering into admission agreements for new residents. The bill would generally make a licensee who fails to comply with the requirements of these provisions liable for civil penalties in the amount of \$500 per violation per day for each day that the licensee is in violation of these provisions until the violation has been corrected. The bill would authorize a current or former resident of a residential care facility for the elderly covered under these provisions to bring a civil action against any person, firm, partnership, or corporation that owns, operates, establishes, manages, conducts, or maintains a residential care facility for the elderly who violates the specified rights of the resident.

*Existing law requires the department to notify affected placement agencies and the Office of the State Long-Term Care Ombudsman whenever the department substantiates that a violation has occurred which poses a serious threat to the health and safety of any resident when the violation results in the assessment of any penalty or causes an accusation to be filed for the revocation of a license.*

*This bill would additionally require the department to provide the Office of the State Long-Term Care Ombudsman with a precautionary notification if the director is reasonably contemplating a temporary suspension or revocation of any license.*

By expanding the definition 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. Section 1569.335 of the Health and Safety Code  
2     is amended to read:  
3     1569.335. (a) The department shall ~~notify affected placement~~  
4     ~~agencies and~~ provide the Office of the State Long-Term Care  
5     Ombudsman, as defined in subdivision (c) of Section 9701 of the  
6     Welfare and Institutions Code, ~~whenever~~ with a precautionary  
7     notification if the director is reasonably contemplating a temporary  
8     suspension or revocation of any license, so that the office may  
9     properly prepare to provide advocacy services if and when  
10    necessary.  
11    (b) The department shall notify affected public placement  
12    agencies, including the Office of the State Long-Term Care  
13    Ombudsman, whenever the department substantiates that a violation  
14    has occurred which poses a serious threat to the health and safety  
15    of any resident when the violation results in the assessment of any  
16    penalty or causes an accusation to be filed for the revocation of a  
17    license.††

1 (c) (1) If the violation is appealed by the facility within 10 days,  
2 the department shall only notify placement agencies of the violation  
3 when the appeal has been exhausted. ~~If~~

4 (2) If the appeal process has not been completed within 60 days,  
5 the placement agency shall be notified with a notation ~~which~~ that  
6 indicates that the case is still under appeal. ~~The~~

7 (3) The notice to each placement agency shall be updated  
8 monthly for the following 24-month period and shall include the  
9 name and location of the facility, the amount of the fine, the nature  
10 of the violation, the corrective action taken, the status of the  
11 revocation, and the resolution of the complaint.

12 ~~SECTION 1.~~

13 SEC. 2. Section 1569.525 of the Health and Safety Code is  
14 amended to read:

15 1569.525. (a) If the director determines that it is necessary to  
16 temporarily suspend or to revoke any license of a residential care  
17 facility for the elderly in order to protect the residents or clients  
18 of the facility from physical or mental abuse, abandonment, or any  
19 other substantial threat to health or safety pursuant to Section  
20 1569.50, the department shall make every effort to minimize  
21 trauma for the residents.

22 (b) (1) The department shall contact the Office of the State  
23 Long-Term Care Ombudsman and any local agency that may have  
24 placement or advocacy responsibility for the residents of a  
25 residential care facility for the elderly after a decision is made to  
26 temporarily suspend or to revoke the license of the facility and  
27 prior to its implementation. The department shall work with these  
28 agencies, and the licensee if the director determines it to be  
29 appropriate, to locate alternative placement sites and to contact  
30 relatives responsible for the care of these residents.

31 (2) If the director is reasonably contemplating a temporary  
32 suspension or revocation of any license, the department shall notify  
33 the Office of the State Long-Term Care Ombudsman pursuant to  
34 Section 1569.335.

35 (c) The department shall use physicians and surgeons and other  
36 medical personnel deemed appropriate by the department to provide  
37 onsite evaluation of the residents and assist in any transfers.

38 (d) The department shall require the licensee to prepare and  
39 submit to the licensing agency a written plan for relocation and  
40 compliance with the terms and conditions of the approved plans,

1 and to provide other information as necessary for the enforcement  
2 of this section.

3 (e) Upon receipt of an order to temporarily suspend or revoke  
4 a license, the licensee shall be prohibited from accepting new  
5 residents or entering into admission agreements for new residents.

6 (f) Upon an order to temporarily suspend a license, the following  
7 shall apply:

8 (1) The licensee shall provide written notice of the temporary  
9 suspension to the resident and the resident’s responsible person,  
10 if applicable, as soon as practically possible, but no later than  
11 within 24 hours of receipt of the department’s temporary  
12 suspension order.

13 (2) The department may secure, or permit the licensee to secure,  
14 the services of a person who is not an immediate family member  
15 of the licensee or an entity that is not owned by the licensee to  
16 manage the day-to-day operations of the facility until the matter  
17 is heard pursuant to Section 1569.50, and for at least 60 days  
18 thereafter, if a proposal that includes both of the following is  
19 submitted to the department as soon as practically possible  
20 following the licensee’s receipt of the department’s temporary  
21 suspension order:

22 (A) A completed “Application for a Community Care Facility  
23 or Residential Care Facility for the Elderly License” form (LIC  
24 200), or similar form as determined by the department, signed and  
25 dated by both the licensee and the person or entity described in  
26 this paragraph.

27 (B) A copy of the executed agreement between the licensee and  
28 the person or entity described in this paragraph that delineates the  
29 roles and responsibilities of each party and specifies that the person  
30 or entity described in this paragraph shall have the full authority  
31 necessary to operate the facility, in compliance with all applicable  
32 laws and regulations, and without interference from the licensee.

33 (g) Upon a final order to revoke a license following any  
34 applicable hearings required under this article, except when  
35 following the temporary suspension of a license pursuant to Section  
36 1569.50 that led to the transfer of all residents, the following shall  
37 apply:

38 (1) The licensee shall provide a 60-day written notice of license  
39 revocation that may lead to closure to the resident and the resident’s

1 responsible person within 24 hours of receipt of the department's  
2 final order of revocation.

3 (2) The department shall permit the licensee to secure the  
4 services of a person who is not an immediate family member of  
5 the licensee or an entity that is not owned by the licensee to manage  
6 the day-to-day operations of the residential care facility for the  
7 elderly for a period of at least 60 days, if a proposal that includes  
8 both of the following is submitted to the department within 72  
9 hours of the licensee's receipt of the department's final order of  
10 revocation:

11 (A) A completed "Application for a Community Care Facility  
12 or Residential Care Facility for the Elderly License" form (LIC  
13 200), or similar form as determined by the department, signed and  
14 dated by both the licensee and the person or entity described in  
15 this paragraph.

16 (B) A copy of the executed agreement between the licensee and  
17 the person or entity described in this paragraph that delineates the  
18 roles and responsibilities of each party and specifies that the person  
19 or entity described in this paragraph shall have the full authority  
20 necessary to operate the facility, in compliance with all applicable  
21 laws and regulations, and without interference from the licensee.

22 (h) (1) The person or entity described in paragraph (2) of  
23 subdivision (f) or paragraph (2) of subdivision (g) shall be currently  
24 licensed and in substantial compliance to operate a residential care  
25 facility for the elderly that is of comparable size or greater and has  
26 comparable programming to the facility. For purposes of this  
27 subparagraph, the following definitions apply:

28 (A) "Comparable programming" includes, but is not limited to,  
29 dementia care, hospice care, and care for residents with exempted  
30 prohibited health care conditions.

31 (B) "Comparable size" means a facility capacity of 1 to 15  
32 residents, 16 to 49 residents, or 50 or more residents.

33 (2) The person or entity described in paragraph (2) of  
34 subdivision (f) or paragraph (2) of subdivision (g) shall not be  
35 subject to the application fee specified in Section 1569.185.

36 (3) If the department denies a proposal to secure the services  
37 of a person or entity pursuant to paragraph (2) of subdivision (f)  
38 or paragraph (2) of subdivision (g), this denial shall not be deemed  
39 a denial of a license application subject to the right to a hearing

1 under Section 1569.22 and other procedural rights under Section  
2 1569.51.

3 (i) (1) Notwithstanding Section 1569.651 or any other law, for  
4 paid preadmission fees, a resident who transfers from the facility  
5 due to the notice of a temporary suspension or revocation of a  
6 license pursuant to this section is entitled to a refund in accordance  
7 with all of the following:

8 (A) A 100-percent refund if preadmission fees were paid within  
9 six months of either notice required by this section.

10 (B) A 75-percent refund if preadmission fees were paid more  
11 than 6 months, but not more than 12 months, before either notice  
12 required by this section.

13 (C) A 50-percent refund if preadmission fees were paid more  
14 than 12 months, but not more than 18 months, before either notice  
15 required by this section.

16 (D) A 25-percent refund if preadmission fees were paid more  
17 than 18 months, but not more than 25 months, before either notice  
18 required by this section.

19 (2) No preadmission fee refund is required if preadmission fees  
20 were paid 25 months or more before either notice required by this  
21 section.

22 (3) The preadmission fee refund required by this paragraph shall  
23 be paid within 15 days of issuing either notice required by this  
24 section. In lieu of the refund, the resident may request that the  
25 licensee provide a credit toward the resident's monthly fee  
26 obligation in an amount equal to the preadmission fee refund due.

27 (4) If a resident transfers from the facility due to the revocation  
28 of a license, and the resident gives notice at least five days before  
29 leaving the facility, or if the transfer is due to a temporary  
30 suspension of the license order, the licensee shall refund to the  
31 resident or his or her legal representative a proportional per diem  
32 amount of any prepaid monthly fees at the time the resident leaves  
33 the facility and the unit is vacated. Otherwise the licensee shall  
34 pay the refund within seven days from the date that the resident  
35 leaves the facility and the unit is vacated.

36 (j) Within 24 hours after each resident who is transferring  
37 pursuant to these provisions has left the facility, the licensee that  
38 had his or her license temporarily suspended or revoked shall,  
39 based on information provided by the resident or the resident's  
40 responsible person, submit a final list of names and new locations

1 of all residents to the department and the local ombudsman  
2 program.

3 (k) If at any point during or following a temporary suspension  
4 or revocation of a license the director determines that there is a  
5 risk to the residents of a facility from physical or mental abuse,  
6 abandonment, or any other substantial threat to health or safety,  
7 the department shall take any necessary action to minimize trauma  
8 for the residents, including, but not limited to, all of the following:

9 (1) Contact any local agency that may have placement or  
10 advocacy responsibility for the residents, and work with those  
11 agencies to locate alternative placement sites.

12 (2) Contact the residents’ relatives, legal representatives,  
13 authorized agents in a health care directive, or responsible parties.

14 (3) Assist in the transfer of residents, and, if necessary, arrange  
15 or ~~provide~~ *coordinate* transportation.

16 (4) Provide onsite evaluation of the residents and use any  
17 medical personnel deemed appropriate by the department to provide  
18 onsite evaluation of the residents and assist in any transfers.

19 (5) Arrange for or ~~provide~~ *coordinate* care and supervision.

20 (6) ~~Distribute~~ *Arrange for the distribution of* medications.

21 (7) Arrange for the preparation and service of meals and snacks.

22 (8) ~~Prepare~~ *Arrange for the preparation of* the residents’ records  
23 and medications for transfer of each resident.

24 (9) Assist in any way necessary to facilitate a safe transfer of  
25 all residents.

26 (10) Check on the status of each transferred resident within 24  
27 hours of transfer.

28 (l) The participation of the department and local agencies in the  
29 relocation of residents from a residential care facility for the elderly  
30 shall not relieve the licensee of any responsibility under this  
31 section. A licensee that fails to comply with the requirements of  
32 this section shall be required to reimburse the department and local  
33 agencies for the cost of providing these services. If the licensee  
34 fails to provide the services required in this section, the department  
35 shall request that the Attorney General’s office, the city attorney’s  
36 office, or the local district attorney’s office seek injunctive relief  
37 and damages.

38 (m) Notwithstanding Section 1569.49, a licensee who fails to  
39 comply with the requirements of this section shall be liable for  
40 civil penalties in the amount of five hundred dollars (\$500) per

1 violation per day for each day that the licensee is in violation of  
2 this section, until the violation has been corrected. The civil  
3 penalties shall be issued immediately following the written notice  
4 of violation.

5 (n) A current or former resident of a residential care facility for  
6 the elderly covered under this section may bring a civil action  
7 against any person, firm, partnership, or corporation that owns,  
8 operates, establishes, manages, conducts, or maintains a residential  
9 care facility for the elderly that violates the rights of the resident,  
10 as set forth in this section. Any person, firm, partnership, or  
11 corporation that owns, operates, establishes, manages, conducts,  
12 or maintains a residential care facility for the elderly that violates  
13 this section shall be responsible for the acts of the facility  
14 employees in violating this section and shall be liable for costs  
15 and attorney’s fees. The residential care facility for the elderly  
16 may also be enjoined from permitting the violation to continue.  
17 The remedies specified in this section shall be in addition to any  
18 other remedy provided by law.

19 (o) This section shall not preclude the department from  
20 amending the effective date in the order of the suspension or  
21 revocation of a license and closing the facility, or from pursuing  
22 any other available remedies if necessary to protect the health and  
23 safety of the residents in care.

24 ~~SEC. 2.~~

25 *SEC. 3.* No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.