

**ASSEMBLY BILL**

**No. 474**

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**Introduced by Assembly Member Brown**

February 23, 2015

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An act to amend Section 1432 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 474, as introduced, Brown. Health facilities: antiretaliation protections.

Existing law prohibits a licensee of a long-term health care facility from discriminating or retaliating in any manner against a complainant, or a patient or employee in its facility, based on the presentation of a grievance or complaint or activities related to a specified investigation or proceeding at the facility. Existing law makes the willful violation of these provisions punishable as a crime.

This bill would expand the antiretaliation protections to apply to all health care workers of a long-term health care facility. The bill would increase the civil penalties and criminal penalties that apply to licensees who violate the provisions. The bill would also specify that a complainant who has been discriminated against may recover attorney's fees and other legal costs.

Because this bill would expand the scope 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 1432 of the Health and Safety Code is  
 2 amended to read:  
 3 1432. (a) ~~No~~(1) A licensee shall *not* discriminate or retaliate  
 4 in any manner against ~~any~~ a complainant, ~~or any patient or~~  
 5 ~~employee in its~~ patient, employee, member of the medical staff, or  
 6 any other health care worker of the long-term health care facility,  
 7 on the basis or for the reason that the ~~complainant, patient,~~  
 8 ~~employee, or any other person~~ has presented a grievance or  
 9 complaint, or has initiated or cooperated in any investigation or  
 10 proceeding of any governmental entity relating to care, services,  
 11 or conditions at that facility. A licensee who violates this section  
 12 is subject to a civil penalty of no more than ten thousand dollars  
 13 (\$10,000), to be assessed by the director and collected in the  
 14 manner provided in Section 1430. *done either of the following:*  
 15 (A) Presented a grievance, complaint, or report to the facility,  
 16 to an entity or agency responsible for accrediting or evaluating  
 17 the facility or the medical staff of the facility, or to any other  
 18 governmental entity.  
 19 (B) Initiated, participated, or cooperated in an investigation or  
 20 administrative proceeding related to the quality of care, services,  
 21 or conditions at the facility that is carried out by an entity or  
 22 agency responsible for accrediting or evaluating the facility or its  
 23 medical staff, or any other governmental entity.  
 24 (2) An entity that owns or operates a long-term health care  
 25 facility shall not discriminate or retaliate against a person because  
 26 that person has taken an action described in this subdivision.  
 27 (3) A violation of this section is subject to a civil penalty of not  
 28 more than twenty-five thousand dollars (\$25,000). The civil penalty  
 29 shall be assessed and recovered through the same administrative  
 30 process set forth in Chapter 2.4 (commencing with Section 1417).  
 31 (b) ~~Any~~An attempt to expel a patient from a long-term health  
 32 care facility, or any type of discriminatory treatment of a patient  
 33 by whom, or upon whose behalf, a grievance or complaint has  
 34 been submitted, directly or indirectly, to ~~any~~ a governmental entity  
 35 or received by a long-term health care facility administrator or any

1 proceeding instituted under or related to this chapter within 180  
2 days of the filing of the complaint or the institution of the action,  
3 shall raise a rebuttable presumption that the action was taken by  
4 the licensee in retaliation for the filing of the complaint.

5 (c) ~~Any~~(1) An attempt to terminate the employment, or other  
6 discriminatory treatment, of ~~any~~ an employee, complainant,  
7 patient, member of the medical staff, or any other health care  
8 worker who has presented a grievance or complaint or has initiated,  
9 participated, or cooperated in ~~any~~ an investigation or proceeding  
10 of ~~any~~ a governmental entity as specified in subdivision (a), ~~and~~  
11 where the facility or licensee had knowledge of the ~~employee's~~  
12 employee, complainant, patient, member of the medical staff, or  
13 any other health care worker's initiation, participation, or  
14 cooperation, shall raise a rebuttable presumption that the action  
15 was taken by the licensee in retaliation if it occurs within 120 days  
16 of the filing of the grievance or complaint, or the institution of the  
17 action.

18 (2) For purposes of this section, discriminatory treatment of an  
19 employee, member of the medical staff, or any other health care  
20 worker includes, but is not limited to, discharge, demotion,  
21 suspension, or an unfavorable change in, or breach of, the terms  
22 or conditions of a contract, employment, or privileges of the  
23 employee, member of the medical staff, or any other health care  
24 worker of the health care facility, or the threat of any of these  
25 actions.

26 (d) Presumptions provided for in subdivisions (b) and (c) ~~shall~~  
27 ~~be~~ are presumptions affecting the burden of producing evidence  
28 as provided in Section 603 of the Evidence Code.

29 (e) ~~Where~~ If the civil penalty assessed is one thousand dollars  
30 (\$1,000) or less, the violation shall be issued and enforced in the  
31 same manner as a class "B" violation, except in no case shall the  
32 penalty be trebled. ~~Where~~ If the civil penalty assessed is in excess  
33 of one thousand dollars (\$1,000), the violation shall be issued and  
34 enforced in the same manner as a class "A" violation, except in  
35 no case shall the penalty be trebled.

36 (f) ~~Any~~ A person who willfully violates this section is guilty  
37 of an infraction punishable by a fine of not more than ~~ten~~ twenty  
38 thousand dollars ~~(\$10,000)~~ (\$20,000).

39 (g) A licensee who violates this section is subject to a civil  
40 penalty or a criminal fine, but not both.

1 (h) ~~Each~~ A long-term health care facility shall prominently post  
2 in a facility location accessible to staff, patients, and visitors written  
3 notice of the right to request an inspection pursuant to Section  
4 1419, the procedure for doing so, including the right to remain  
5 anonymous, and the prohibition against retaliation.

6 (i) (1) *An employee who has been discriminated against in*  
7 *employment pursuant to this section is entitled to reinstatement,*  
8 *reimbursement for lost wages and work benefits caused by the acts*  
9 *of the employer, and the legal costs associated with pursuing the*  
10 *case, or to any remedy deemed warranted by the court pursuant*  
11 *to this chapter or any other applicable provision of statutory or*  
12 *common law.*

13 (2) *A health care worker who has been discriminated against*  
14 *pursuant to this section is entitled to reinstatement, reimbursement*  
15 *for lost income, and the legal costs associated with pursuing the*  
16 *case, or to any remedy deemed warranted by the court pursuant*  
17 *to this chapter or any other applicable provision of statutory or*  
18 *common law.*

19 (3) *A member of the medical staff who has been discriminated*  
20 *against pursuant to this section is entitled to reinstatement,*  
21 *reimbursement for lost income resulting from a change in the terms*  
22 *or conditions of his or her privileges caused by the acts of the*  
23 *facility or the entity that owns or operates the facility or any other*  
24 *health facility that is owned or operated by that entity, and the*  
25 *legal costs associated with pursuing the case, or to any remedy*  
26 *deemed warranted by the court pursuant to this chapter or any*  
27 *other applicable provision of statutory or common law.*

28 (4) *For purposes of this subdivision, “legal costs” means*  
29 *attorney’s fees, litigation costs, and expert witness fees incurred*  
30 *in the litigation.*

31 (j) *For purposes of this section, “long-term health care facility”*  
32 *means a facility defined under Section 1418, including, but not*  
33 *limited to, the facility’s administrative personnel, employees,*  
34 *boards, and committees of the board, and medical staff.*

35 (i)

36 (k) *For purposes of this section, “complainant” means any a*  
37 *person who has filed a complaint, as defined in Section 1420.*

38 (l) *This section does not abrogate or limit any other theory of*  
39 *liability or remedy otherwise available at law.*

1     SEC. 2. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

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