

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 474**

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**Introduced by Assembly ~~Member Brown~~ Members *Brown and  
Thurmond***

**(Principal coauthor: Assembly Member *Cristina Garcia*)**

**(Principal coauthor: Senator *Liu*)**

**(Coauthor: Assembly Member *Chu*)**

February 23, 2015

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~~An act to amend Section 1432 of the Health and Safety Code, relating to health facilities.~~ *An act to add Section 12201.02 to the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 474, as amended, Brown. ~~Health facilities: antiretaliation protections.~~ *Public social services: SSI/SSP.*

*Existing law provides for the State Supplementary Program for the Aged, Blind and Disabled (SSP), which requires the State Department of Social Services to contract with the United States Secretary of Health and Human Services to make payments to SSP recipients to supplement Supplemental Security Income (SSI) payments made available pursuant to the federal Social Security Act.*

*Under existing law, benefit payments under the SSP are calculated by establishing the maximum level of nonexempt income and federal SSI and state SSP benefits for each category of eligible recipient. The state SSP payment is the amount, when added to the nonexempt income and SSI benefits available to the recipient, which would be required to provide the maximum benefit payment.*

*This bill, for the 2015–16 fiscal year, and annually thereafter, would require the state maximum SSP grant for individuals to be readjusted and increased so that the state SSP payment and federal SSI payment, when combined, equal 112% of the federal poverty level. By increasing the amount of SSP payments, which are expended from a continuously appropriated fund, the bill would make an appropriation.*

~~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~~<sup>2/3</sup>. Appropriation: ~~no~~<sup>yes</sup>. Fiscal committee: yes. State-mandated local program: ~~yes~~<sup>no</sup>.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 12201.02 is added to the Welfare and
- 2     Institutions Code, to read:
- 3     12201.02. Notwithstanding any other law, for the 2015–16
- 4     fiscal year, and annually thereafter, the state maximum SSP grant
- 5     for individuals shall be readjusted and increased so that the state
- 6     SSP payment and federal SSI payment, when combined, shall equal
- 7     112 percent of the federal poverty level.
- 8     SECTION 1. ~~Section 1432 of the Health and Safety Code is~~
- 9     ~~amended to read:~~

1 1432. ~~(a) (1) A licensee shall not discriminate or retaliate in~~  
2 ~~any manner against a complainant, patient, employee, member of~~  
3 ~~the medical staff, or any other health care worker of the long-term~~  
4 ~~health care facility, on the basis or for the reason that the person~~  
5 ~~has done either of the following:~~  
6 ~~(A) Presented a grievance, complaint, or report to the facility,~~  
7 ~~to an entity or agency responsible for accrediting or evaluating the~~  
8 ~~facility or the medical staff of the facility, or to any other~~  
9 ~~governmental entity.~~  
10 ~~(B) Initiated, participated, or cooperated in an investigation or~~  
11 ~~administrative proceeding related to the quality of care, services,~~  
12 ~~or conditions at the facility that is carried out by an entity or agency~~  
13 ~~responsible for accrediting or evaluating the facility or its medical~~  
14 ~~staff, or any other governmental entity.~~  
15 ~~(2) An entity that owns or operates a long-term health care~~  
16 ~~facility shall not discriminate or retaliate against a person because~~  
17 ~~that person has taken an action described in this subdivision.~~  
18 ~~(3) A violation of this section is subject to a civil penalty of not~~  
19 ~~more than twenty-five thousand dollars (\$25,000). The civil penalty~~  
20 ~~shall be assessed and recovered through the same administrative~~  
21 ~~process set forth in Chapter 2.4 (commencing with Section 1417).~~  
22 ~~(b) An attempt to expel a patient from a long-term health care~~  
23 ~~facility, or any type of discriminatory treatment of a patient by~~  
24 ~~whom, or upon whose behalf, a grievance or complaint has been~~  
25 ~~submitted, directly or indirectly, to a governmental entity or~~  
26 ~~received by a long-term health care facility administrator or any~~  
27 ~~proceeding instituted under or related to this chapter within 180~~  
28 ~~days of the filing of the complaint or the institution of the action,~~  
29 ~~shall raise a rebuttable presumption that the action was taken by~~  
30 ~~the licensee in retaliation for the filing of the complaint.~~  
31 ~~(c) (1) An attempt to terminate the employment, or other~~  
32 ~~discriminatory treatment, of an employee, complainant, patient,~~  
33 ~~member of the medical staff, or any other health care worker who~~  
34 ~~has presented a grievance or complaint or has initiated, participated,~~  
35 ~~or cooperated in an investigation or proceeding of a governmental~~  
36 ~~entity as specified in subdivision (a), where the facility or licensee~~  
37 ~~had knowledge of the employee, complainant, patient, member of~~  
38 ~~the medical staff, or any other health care worker's initiation,~~  
39 ~~participation, or cooperation, shall raise a rebuttable presumption~~  
40 ~~that the action was taken by the licensee in retaliation if it occurs~~

1 within 120 days of the filing of the grievance or complaint, or the  
2 institution of the action.

3 (2) For purposes of this section, discriminatory treatment of an  
4 employee, member of the medical staff, or any other health care  
5 worker includes, but is not limited to, discharge, demotion,  
6 suspension, or an unfavorable change in, or breach of, the terms  
7 or conditions of a contract, employment, or privileges of the  
8 employee, member of the medical staff, or any other health care  
9 worker of the health care facility, or the threat of any of these  
10 actions.

11 (d) Presumptions provided for in subdivisions (b) and (c) are  
12 presumptions affecting the burden of producing evidence as  
13 provided in Section 603 of the Evidence Code.

14 (e) If the civil penalty assessed is one thousand dollars (\$1,000)  
15 or less, the violation shall be issued and enforced in the same  
16 manner as a class "B" violation, except in no case shall the penalty  
17 be trebled. If the civil penalty assessed is in excess of one thousand  
18 dollars (\$1,000), the violation shall be issued and enforced in the  
19 same manner as a class "A" violation, except in no case shall the  
20 penalty be trebled.

21 (f) A person who willfully violates this section is guilty of an  
22 infraction punishable by a fine of not more than twenty thousand  
23 dollars (\$20,000).

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

26 (h) A long-term health care facility shall prominently post in  
27 a facility location accessible to staff, patients, and visitors written  
28 notice of the right to request an inspection pursuant to Section  
29 1419, the procedure for doing so, including the right to remain  
30 anonymous, and the prohibition against retaliation.

31 (i) (1) An employee who has been discriminated against in  
32 employment pursuant to this section is entitled to reinstatement,  
33 reimbursement for lost wages and work benefits caused by the acts  
34 of the employer, and the legal costs associated with pursuing the  
35 case, or to any remedy deemed warranted by the court pursuant to  
36 this chapter or any other applicable provision of statutory or  
37 common law.

38 (2) A health care worker who has been discriminated against  
39 pursuant to this section is entitled to reinstatement, reimbursement  
40 for lost income, and the legal costs associated with pursuing the

1 case, or to any remedy deemed warranted by the court pursuant to  
2 this chapter or any other applicable provision of statutory or  
3 common law.

4 (3) A member of the medical staff who has been discriminated  
5 against pursuant to this section is entitled to reinstatement,  
6 reimbursement for lost income resulting from a change in the terms  
7 or conditions of his or her privileges caused by the acts of the  
8 facility or the entity that owns or operates the facility or any other  
9 health facility that is owned or operated by that entity, and the  
10 legal costs associated with pursuing the case, or to any remedy  
11 deemed warranted by the court pursuant to this chapter or any  
12 other applicable provision of statutory or common law.

13 (4) For purposes of this subdivision, “legal costs” means  
14 attorney’s fees, litigation costs, and expert witness fees incurred  
15 in the litigation.

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

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

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

24 SEC. 2. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.