

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN ASSEMBLY JUNE 10, 2010

AMENDED IN SENATE APRIL 21, 2010

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1119

**Introduced by Senator Wright
(Coauthors: Senators Alquist and Negrete McLeod)**

February 17, 2010

An act to amend Sections 1812.540, 1812.542, 1812.543, and 1812.544 of, to amend the heading of Chapter 8 (commencing with Section 1812.540) of Title 2.91 of Part 4 of Division 3 of, and to add Sections 1812.545 and 1812.546 to, the Civil Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1119, as amended, Wright. Health care staffing.

The Employment Agency, Employment Counseling, and Job Listing Services Act, the violation of which is a misdemeanor, regulates the business of employment agencies, including nurses' registries, as defined. Existing law requires an employment agency that refers temporary licensed nursing staff, as defined, to an employer ~~who~~ *that* is a licensed long-term health care facility, as defined, to provide the employer with (1) written verification that the person is in good standing with the Board of Registered Nursing or *the* Board of Vocational Nursing and Psychiatric Technicians, as applicable, and has successfully secured a criminal record clearance, (2) the individual's professional license and registration number and date of expiration, (3) a statement that the person has had a health examination, as specified, and (4) written

verification that the individual referred does not have any unresolved allegations against him or her involving mistreatment, neglect, or abuse of a patient, as specified. Existing law also requires these agencies to adopt policies and procedures regarding prevention of resident or patient abuse by temporary staff.

This bill would impose those requirements on an employment agency that refers temporary licensed nursing staff to any health facility, as defined.

Existing law requires an employer to report to the Board of Vocational Nursing and Psychiatric Technicians the suspension or termination for cause of any licensed vocational nurse or psychiatric technician in its employ.

This bill would require an employment agency to report to the board the suspension or termination for cause by a health facility of a licensed vocational nurse or psychiatric technician referred to the facility by the agency. ~~The bill would also require a health facility that refuses to accept a placement of a licensed nursing staff or a certified nurse assistant from an employment agency to inform the agency of its reasons and of any action that may constitute grounds for reporting of the person's termination or suspension for cause.~~ *When a health facility makes that report to the board regarding one of the above-described licensed persons, who was referred to that health facility by an employment agency, the bill would require the health facility to send a copy of the report to that employment agency.* The bill would also make conforming changes.

The bill would authorize the imposition of civil penalties of up to \$5,000 for each violation, and up to \$10,000 for each willful or knowing violation, of the bill's provisions.

Because this bill would establish additional requirements under the act, the violation of which would be a misdemeanor, 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:

SECTION 1. The heading of Chapter 8 (commencing with Section 1812.540) of Title 2.91 of Part 4 of Division 3 of the Civil Code is amended to read:

CHAPTER 8. HEALTH FACILITIES TEMPORARY STAFFING

SEC. 2. Section 1812.540 of the Civil Code is amended to read:

1812.540. For purposes of this chapter, the following definitions shall apply:

(a) "Direct care service" means the temporary assignment of certified nurse assistants to render basic care services directed at the safety, comfort, personal hygiene, or protection of a patient who is a resident of a long-term health care facility.

(b) "Nursing service" means the temporary assignment of a licensed registered nurse, licensed vocational nurse, or psychiatric technician to render nursing and basic care services to one or more patients at a health facility.

(c) "Licensed nursing staff" means a licensed registered nurse, licensed vocational nurse, or psychiatric technician.

(d) "Long-term health care facility" means a licensed facility, as defined in Section 1418 of the Health and Safety Code.

(e) "Health facility" means a licensed facility, as defined in Section 1250 of the Health and Safety Code.

SEC. 3. Section 1812.542 of the Civil Code is amended to read:

1812.542. Every employment agency that refers temporary licensed nursing staff to an employer who is a licensed health facility shall provide the employer with all of the following:

(a) Written verification that the individual is in good standing with the Board of Registered Nursing or the Board of Vocational Nursing and Psychiatric Technicians, as applicable, and has successfully ~~secured a criminal record clearance~~ *completed the criminal record process required by the applicable licensing board.* The employment agency shall provide to the employer the individual's professional license and registration number and date of expiration.

(b) A statement that the licensed nursing staff person has had a health examination within 90 days prior to employment with the employment agency or seven days after employment with the employment agency and at least annually thereafter by a person lawfully authorized to perform that procedure. Each examination shall include a medical history and physical evaluation. The employment agency shall also provide verification that the individual has had tuberculosis screening within 90 days prior to employment and annually thereafter.

SEC. 4. Section 1812.543 of the Civil Code is amended to read:

1812.543. (a) An employment agency that makes referrals of licensed nursing staff for temporary employment in a health facility, or certified nurse assistants for temporary employment in a long-term health care facility shall adopt policies and procedures regarding prevention of resident or patient abuse by temporary staff.

(b) The employment agency shall provide written verification to the long-term health care facility or health facility that any certified nurse assistants or licensed nursing staff referred by the agency do not have any unresolved allegations against them involving the mistreatment, neglect, or abuse of a patient, including injuries of unknown source and misappropriation of resident property.

(c) No temporary staff person referred by an employment agency may be solely responsible for a unit unless that person has received a full orientation to the facility and the applicable unit for which he or she is assigned.

(d) Upon the request of the State Department of Public Health, an employment agency shall provide a list of temporary employees who have been referred to a specified facility during the period in which the facility is involved in a labor action.

(e) An employment agency shall require that any employee referred to a long-term health care facility be identified as a temporary staff person in the facility's daily staffing levels required to be posted in accordance with the standards set forth in Section 941 of Appendix F of Public Law 106-554 (42 U.S.C. Sec. 1395i-3(b)(8) and 42 U.S.C. Sec. 1395r(b)(8)).

SEC. 5. Section 1812.544 of the Civil Code is amended to read:

1812.544. (a) Every employment agency that makes referrals of licensed nursing staff for temporary employment in a health facility or certified nurse assistants for temporary employment in a long-term health care facility shall maintain a record of all advertisements, showing the date of publication and the publication in which the advertisement appeared, for a period of one year from the date of the advertisement.

(b) No employment agency that makes referrals for employment to a health facility shall, by its name, advertisement, or any other representation, represent itself to be a home health agency, as defined by subdivision (a) of Section 1727 of the Health and Safety Code, or to perform the services of a home health agency. The employment agency shall provide a written disclosure to each employer stating that it does not perform the services of a home health agency and clearly describing that it is an employment agency only.

(c) Any facility or individual may refer complaints concerning employment agencies which place licensed nursing staff in health facilities or certified nurse assistants in long-term health care facilities to the appropriate licensing, certification, ombudsman, adult protective services, or proper law enforcement agency for action.

SEC. 6. Section 1812.545 is added to the Civil Code, to read:

1812.545. (a) An employment agency that refers licensed nursing staff for temporary employment in a health facility shall have the same duty to report the suspension or termination for cause of any licensed vocational nurse or licensed psychiatric technician as an employer pursuant to subdivision (b) of Section 2878.1 or subdivision (b) of Section 4521.2, respectively, of the Business and Professions Code.

~~(b) A health facility that receives referrals of licensed nursing staff or certified nurse assistants from an employment agency and that sends back to the agency a licensed nursing staff person or certified nurse assistant, or refuses placement from the agency of a licensed nursing staff person or a certified nurse assistant, shall inform the agency of its reasons for doing so and of any action that may constitute grounds for reporting pursuant to subdivision (b).~~

(b) A health facility that makes a report pursuant to subdivision (a) shall send a copy of the report to the employment agency that

1 *placed the relevant licensed vocational nurse or psychiatric*
2 *technician with the health facility.*

3 SEC. 7. Section 1812.546 is added to the Civil Code, to read:

4 1812.546. (a) In addition to the remedies for violations of this
5 title provided in Section 1812.523, any ~~person~~ *employment agency*
6 that violates any provision of this chapter shall be subject to a civil
7 penalty of up to five thousand dollars (\$5,000) for each violation,
8 and of up to ten thousand dollars (\$10,000) for each willful or
9 knowing violation.

10 (b) These civil penalties may be assessed and recovered through
11 a civil action brought in the name of the people of the State of
12 California by the Attorney General, by any district attorney, or
13 any city attorney.

14 (c) Any civil penalties recovered pursuant to this section shall
15 be deposited in the State Treasury, with respect to an action brought
16 by the Attorney General, in the treasury for the county, with respect
17 to an action brought by a district attorney, or the city treasury with
18 respect to an action brought by a city attorney.

19 (d) The sanctions authorized under this section shall be separate
20 from, and in addition to, all other remedies, either civil,
21 administrative, or criminal, provided by law.

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