

## Senate Bill No. 692

### CHAPTER 2

An act to amend Section 15660 of, and to add Section 12301.8 to, the Welfare and Institutions Code, relating to in-home supportive services.

[Approved by Governor March 14, 2008. Filed with  
Secretary of State March 14, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 692, Ashburn. In-home supportive services: criminal background checks.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Under existing law, the functions of a nonprofit consortium contracting with the county to operate the program, or a public authority established for this purpose, include investigating the qualifications and background of potential personnel.

Existing law requires the Department of Justice to secure any criminal record to determine whether a person has been convicted or incarcerated within the last 10 years for a sex offense against a minor or for a violation of other prescribed crimes, including any felony, and to provide a subsequent arrest notification, as provided, if an employer of the person requests the determination and submits fingerprints of the person to the department and the person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home. Existing law defines "employer" for purposes of these provisions to include, but not be limited to, an IHSS recipient and any recipient of personal care services under the Medi-Cal program.

This bill would authorize a nonprofit consortium or public authority to assist an aged or disabled adult who is ineligible for IHSS program services in obtaining a criminal background check conducted by the Department of Justice on a provider, as described. The bill would also revise the definition of employer in the above-described provisions that require the Department of Justice to secure a criminal background check to include an aged or disabled adult, or that individual's authorized representative, who is ineligible to receive IHSS benefits and who receives in-home nonmedical domestic or personal care from a provider, as defined.

The bill would authorize a nonprofit consortium or a public authority to recover costs related to administering these provisions.

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

SECTION 1. Section 12301.8 is added to the Welfare and Institutions Code, to read:

12301.8. (a) (1) A public authority or nonprofit consortium established pursuant to Section 12301.6, upon the request of an aged or disabled adult or that individual's authorized representative, may assist an employer, as defined in paragraph (2), in obtaining a criminal background check conducted by the Department of Justice, as authorized pursuant to Section 15660, of a provider, as described in paragraph (3).

(2) For purposes of this section, an "employer" means an aged or disabled adult, or that individual's authorized representative, who is ineligible for benefits under this chapter and who receives care by a provider as described in paragraph (3).

(3) For purposes of this section, a "provider" means a person who is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult who is ineligible to receive benefits under this chapter, in the adult's own home.

(b) A public authority or nonprofit consortium may recover the costs of administering this section, including the cost to the Department of Justice for processing the criminal background check, from the individual making the request, as described in subdivision (a).

(c) No General Fund moneys shall be used to implement this section.

SEC. 2. Section 15660 of the Welfare and Institutions Code is amended to read:

15660. (a) The Department of Justice shall secure any criminal record of a person to determine whether the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of any felony that requires registration pursuant to Section 290 of the Penal Code, or whether the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, and shall provide a subsequent arrest notification pursuant to Section 11105.2 of the Penal Code, if both of the following conditions are met:

(1) An employer of the person requests the determination and submits fingerprints of the person to the Department of Justice. For purposes of this paragraph, "employer" includes, but is not limited to, an in-home supportive services recipient, as defined by Section 12302.2, an aged or disabled adult who is ineligible for benefits under Chapter 3 (commencing with Section 12000), who receives care by a person as described with paragraph (2), any recipient of personal care services under the Medi-Cal program pursuant to

Sections 14132.95 to 14132.97, inclusive, and any public authority or nonprofit consortium, as described in subdivision (a) of Section 12301.6.

(2) The person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home.

(b) (1) If it is found that the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of any felony which requires registration pursuant to Section 290 of the Penal Code, or that the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, the Department of Justice shall notify the employer of that fact. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact.

(2) Any employer may deny employment to any person who is the subject of a report under paragraph (1) when the report indicates that the person has committed any of the crimes identified in paragraph (1).

(3) Nothing in this section shall be construed to require any employer to hire any person who is the subject of a report under paragraph (1) when the report indicates that the person has not committed any of the crimes indicated in paragraph (1).

(c) (1) Fingerprints shall be on a card provided by the Department of Justice for the purpose of obtaining a set of fingerprints. The employer shall submit the fingerprints to the Department of Justice. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the employer of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact as soon as possible, but not later than 30 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints, notify the employer that the fingerprints were illegible.

(2) Fingerprints may be taken by any local law enforcement officer or agency for purposes of paragraph (1).

(3) Counties shall notify any recipient of, or applicant for, in-home supportive services or personal care services under the Medi-Cal program, upon his or her application for in-home supportive services or personal care services or during his or her annual redetermination, or upon the recipient's changing providers, that a criminal record check is available, and that the check can be performed by the Department of Justice.

(d) (1) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section.

(2) (A) If the employer is an in-home supportive services recipient, as defined in Section 123202.2, a recipient of personal care services under the Medi-Cal program pursuant to Sections 14132.95 to 14132.97, inclusive,

or any public authority or nonprofit consortium as described in subdivision (a) of Section 12301.6, the fee shall be shared by the county and the state in the same ratio as described in Section 12306.

(B) (i) Notwithstanding any other provision of law, and except as provided in clause (ii), the department shall, no later than January 1, 2009, implement subparagraph (A) through an all county letter from the director.

(ii) No later than July 1, 2009, the department shall adopt regulations to implement the provisions listed in clause (i).

(e) It is the intent of the Legislature that the Department of Justice charge a fee to cover its cost in providing services in accordance with this section to comply with the 30-calendar-day requirement for provision to the department of the criminal record information, as contained in subdivision (c).