

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 5, 2009

**SENATE BILL**

**No. 389**

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**Introduced by Senator Negrete McLeod**

February 26, 2009

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An act to amend Section 144 of, and to add Sections 144.5 and 144.6 to, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as amended, Negrete McLeod. Professions and vocations.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on various grounds, including, but not limited to, conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law requires applicants to certain boards to provide a full set of fingerprints for the purpose of conducting criminal history record checks.

This bill would make that fingerprinting requirement applicable to the Dental Board of California, the Dental Hygiene Committee of California, the Professional Fiduciaries Bureau, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners. The bill would require *new* applicants for a license ~~and~~, *and petitioners for reinstatement of a revoked, surrendered, or canceled license, to successfully complete a state and federal level criminal record information search. The bill would also require*, commencing January 1, 2011, licensees who have

not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to ~~successfully~~ complete *the process necessary for* a state and federal level criminal offender record information search, as specified. The bill would require licensees *applying for license renewal* to certify compliance with that requirement, as specified, and would subject a licensee to disciplinary action for making a false certification. The bill would also require a licensee to, as a condition of renewal of the license, notify the board on the license renewal form if he or she, *or any member of the personnel of record of the licensee*, has been convicted, as defined, of a felony or misdemeanor since ~~his or her~~ *the* last renewal, or if this is the licensee's first renewal, since the initial license was issued. *The bill would provide that the Contractors' State License Board shall implement the provisions pertaining to renewal licenses on a specified schedule, after an appropriation is made for this purpose, utilizing its applicable fees.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 144 of the Business and Professions Code
- 2 is amended to read:
- 3 144. (a) Notwithstanding any other provision of law, an agency
- 4 designated in subdivision (b) shall require an applicant for a license
- 5 *or a petitioner for reinstatement of a revoked, surrendered, or*
- 6 *canceled license* to furnish to the agency a full set of fingerprints
- 7 for purposes of conducting criminal history record checks and
- 8 shall require the applicant *or petitioner* to successfully complete
- 9 a state and federal level criminal offender record information search
- 10 conducted through the Department of Justice as provided in
- 11 subdivision (c) or as otherwise provided in this code.
- 12 (b) Subdivision (a) applies to the following:
- 13 (1) California Board of Accountancy.
- 14 (2) State Athletic Commission.
- 15 (3) Board of Behavioral Sciences.
- 16 (4) Court Reporters Board of California.
- 17 (5) State Board of Guide Dogs for the Blind.
- 18 (6) California State Board of Pharmacy.
- 19 (7) Board of Registered Nursing.
- 20 (8) Veterinary Medical Board.

- 1 (9) Registered Veterinary Technician Committee.
- 2 (10) Board of Vocational Nursing and Psychiatric Technicians.
- 3 (11) Respiratory Care Board of California.
- 4 (12) Hearing Aid Dispensers Bureau.
- 5 (13) Physical Therapy Board of California.
- 6 (14) Physician Assistant Committee of the Medical Board of
- 7 California.
- 8 (15) Speech-Language Pathology and Audiology Board.
- 9 (16) Medical Board of California.
- 10 (17) State Board of Optometry.
- 11 (18) Acupuncture Board.
- 12 (19) Cemetery and Funeral Bureau.
- 13 (20) Bureau of Security and Investigative Services.
- 14 (21) Division of Investigation.
- 15 (22) Board of Psychology.
- 16 (23) California Board of Occupational Therapy.
- 17 (24) Structural Pest Control Board.
- 18 (25) Contractors' State License Board.
- 19 (26) Bureau of Naturopathic Medicine.
- 20 (27) Dental Board of California.
- 21 (28) Dental Hygiene Committee of California.
- 22 (29) Professional Fiduciaries Bureau.
- 23 (30) California Board of Podiatric Medicine.
- 24 (31) Osteopathic Medical Board of California.
- 25 (32) State Board of Chiropractic Examiners.
- 26 (c) Except as otherwise provided in this code, each agency listed
- 27 in subdivision (b) shall direct applicants for a license *or a petitioner*
- 28 *for reinstatement of a revoked, surrendered, or canceled license*
- 29 to submit to the Department of Justice fingerprint images and
- 30 related information required by the Department of Justice for the
- 31 purpose of obtaining information as to the existence and content
- 32 of a record of state or federal convictions and state or federal arrests
- 33 and also information as to the existence and content of a record of
- 34 state or federal arrests for which the Department of Justice
- 35 establishes that the person is free on bail or on his or her
- 36 recognizance pending trial or appeal. The Department of Justice
- 37 shall forward the fingerprint images and related information
- 38 received to the Federal Bureau of Investigation and request federal
- 39 criminal history information. The Department of Justice shall
- 40 compile and disseminate state and federal responses to the agency

1 pursuant to subdivision (p) of Section 11105 of the Penal Code.  
2 The agency shall request from the Department of Justice  
3 subsequent arrest notification service, pursuant to Section 11105.2  
4 of the Penal Code, for each person who submitted information  
5 pursuant to this subdivision. The Department of Justice shall charge  
6 a fee sufficient to cover the cost of processing the request described  
7 in this section.

8 SEC. 2. Section 144.5 is added to the Business and Professions  
9 Code, to read:

10 144.5. (a) Notwithstanding any other provision of law, an  
11 agency designated in subdivision (b) of Section 144 shall require  
12 a licensee who has not previously submitted fingerprints or for  
13 whom a record of the submission of fingerprints no longer exists  
14 to, as a condition of license renewal, ~~successfully complete~~  
15 *complete the process necessary for* a state and federal level criminal  
16 offender record information search *to be* conducted through the  
17 Department of Justice as provided in subdivision (d).

18 ~~(b) (1) A licensee described in subdivision (a) shall, as a~~  
19 ~~condition of license renewal, certify on the renewal application~~  
20 ~~that he or she has successfully completed a state and federal level~~  
21 ~~criminal offender record information search pursuant to subdivision~~  
22 ~~(d):~~

23 ~~(2) The licensee shall retain for at least three years, as evidence~~  
24 ~~of the certification made pursuant to paragraph (1), either a receipt~~  
25 ~~showing that he or she has electronically transmitted his or her~~  
26 ~~fingerprint images to the Department of Justice or, for those~~  
27 ~~licensees who did not use an electronic fingerprinting system, a~~  
28 ~~receipt evidencing that the licensee's fingerprints were taken.~~

29 ~~(b) (1) As a condition of license renewal, a licensee described~~  
30 ~~in subdivision (a) shall complete the process necessary for a state~~  
31 ~~and federal level criminal offender record information search to~~  
32 ~~be conducted as provided in subdivision (d).~~

33 ~~(2) No license of a licensee described in subdivision (a) shall~~  
34 ~~be renewed until certification by the licensee is received by the~~  
35 ~~agency verifying that the licensee has complied with this~~  
36 ~~subdivision. The certification shall be made on a form provided~~  
37 ~~by the agency not later than the renewal date of the license.~~

38 ~~(3) As evidence of the certification made pursuant to paragraph~~  
39 ~~(2), the licensee shall retain either of the following for at least~~  
40 ~~three years:~~

1 (A) *The receipt showing that the fingerprint images required*  
2 *by this section were electronically transmitted to the Department*  
3 *of Justice.*

4 (B) *For those licensees who did not use an electronic*  
5 *fingerprinting system, the receipt evidencing that the fingerprint*  
6 *images required by this section were taken.*

7 (c) Failure to provide the certification required by subdivision  
8 (b) renders an application for *license* renewal incomplete. An  
9 agency shall not renew the license until a complete application is  
10 submitted.

11 (d) Each agency listed in subdivision (b) of Section 144 shall  
12 direct licensees described in subdivision (a) to submit to the  
13 Department of Justice fingerprint images and related information  
14 required by the Department of Justice for the purpose of obtaining  
15 information as to the existence and content of a record of state or  
16 federal convictions and state or federal arrests and also information  
17 as to the existence and content of a record of state or federal arrests  
18 for which the Department of Justice establishes that the person is  
19 free on bail or on his or her recognizance pending trial or appeal.  
20 The Department of Justice shall forward the fingerprint images  
21 and related information received to the Federal Bureau of  
22 Investigation and request federal criminal history information. The  
23 Department of Justice shall compile and disseminate state and  
24 federal responses to the agency pursuant to subdivision (p) of  
25 Section 11105 of the Penal Code. The agency shall request from  
26 the Department of Justice subsequent arrest notification service,  
27 pursuant to Section 11105.2 of the Penal Code, for each person  
28 who submitted information pursuant to this subdivision. The  
29 Department of Justice shall charge a fee sufficient to cover the  
30 cost of processing the request described in this section.

31 (e) An agency may waive the requirements of this section if the  
32 license is inactive or retired, or if the licensee is actively serving  
33 in the military. The agency ~~may~~ *shall* not activate an inactive  
34 license or return a retired license to full licensure status for a  
35 licensee described in subdivision (a) until the licensee has  
36 successfully completed a state and federal level criminal offender  
37 record information search pursuant to subdivision (d).

38 ~~(f) With respect to licensees that are business entities, each~~  
39 ~~agency listed in subdivision (b) of Section 144 shall, by regulation,~~  
40 ~~determine which owners, officers, directors, shareholders,~~

1 ~~members, agents, employees, or other natural persons who are~~  
2 ~~representatives of the business entity are required to submit~~  
3 ~~fingerprint images to the Department of Justice and disclose the~~  
4 ~~information on its renewal forms, as required by this section.~~

5 ~~(g)~~

6 (f) A licensee who falsely certifies completion of a state and  
7 federal level criminal record information search under subdivision  
8 ~~(b) may be subject to disciplinary action by his or her licensing~~  
9 ~~agency. (b) shall be subject to disciplinary action.~~

10 (g) (1) *As it relates to the Contractors' State License Board,*  
11 *the provisions of this section shall become operative on the date*  
12 *on which an appropriation is made in the annual Budget Act to*  
13 *fund the activities of the Contractors' State License Board to*  
14 *accommodate a criminal history record check pursuant to this*  
15 *section. If this section becomes operative with respect to the*  
16 *Contractors' State License Board on or before July 1, 2012, the*  
17 *Contractors' State License Board shall implement this section*  
18 *according to the following schedule, and shall utilize the fees under*  
19 *its fee cap accordingly:*

20 (A) *For licenses initially issued between January 1, 2000, and*  
21 *December 31, 2005, inclusive, the certification required under*  
22 *subdivision (b) shall be submitted during the license renewal period*  
23 *that commences on January 1, 2013.*

24 (B) *For licenses initially issued between January 1, 1990, and*  
25 *December 31, 1999, inclusive, the certification required under*  
26 *subdivision (b) shall be submitted during the license renewal period*  
27 *that commences on January 1, 2015.*

28 (C) *For licenses initially issued prior to January 1, 1990, the*  
29 *certification required under subdivision (b) shall be submitted*  
30 *during the license renewal period that commences on January 1,*  
31 *2017.*

32 (2) *If this section becomes operative with respect to the*  
33 *Contractors' State License Board after July 1, 2012, the license*  
34 *renewal period commencement dates specified in subparagraphs*  
35 *(A), (B), and (C) of paragraph (1) shall be delayed one year at a*  
36 *time until this section becomes operative with respect to the*  
37 *Contractors' State License Board.*

38 (h) This section shall become operative on January 1, 2011.

39 SEC. 3. Section 144.6 is added to the Business and Professions  
40 Code, to read:

1 144.6. (a) An agency described in subdivision (b) of Section  
2 144 shall require a licensee, as a condition of license renewal, to  
3 ~~notify the board on the license renewal form if he or she has been~~  
4 *notify the agency on the license renewal form if he or she, or any*  
5 *member of the personnel of record of the licensee, has been*  
6 convicted, as defined in Section 490, of a felony or misdemeanor  
7 ~~since his or her last renewal, or if this is the licensee's first renewal,~~  
8 ~~since the initial license was issued.~~ *since the license was last*  
9 *renewed, or since the license was initially issued if it has not been*  
10 *previously renewed.*

11 (b) The reporting requirement imposed under this section shall  
12 apply in addition to any other reporting requirement imposed under  
13 this code.