

Assembly Bill No. 857

CHAPTER 911

An act to amend Section 15660 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 25, 1996. Filed
with Secretary of State September 26, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 857, Woods. In-home supportive service providers: criminal record checks.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program.

Existing law provides that the Department of Justice shall secure any criminal record of a person to determine whether the person has been convicted within the last 10 years of any felony or of specified offenses if an employer of the person requests the determination and submits fingerprints of the person to the Department of Justice.

This bill would include a recipient of in-home supportive services within the definition of employer for those purposes, and would specify that any local law enforcement agency or officer may take fingerprints for that purpose.

This bill would impose a state-mandated local program by requiring counties to notify IHSS recipients and applicants upon application or the annual redetermination, or upon the changing of providers, of the availability of the criminal record check, and that it can be performed by the Department of Justice.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. 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 been convicted within the last 10 years of a sex offense against a minor, a violation of Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, theft, robbery, burglary, or any felony, 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 and any recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95.

(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 been convicted within the last 10 years of a sex offense against a minor, a violation of Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, 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) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section.

(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).

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

