

AMENDED IN ASSEMBLY APRIL 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2431

Introduced by Assembly Member Runner

February 24, 2000

An act to amend Section ~~1596.885~~ 1596.871 of, and to add Section 1596.8775 to, the Health and Safety Code, relating to child day care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2431, as amended, Runner. Child day care licensure.

Existing law generally regulates the licensure by the State Department of Social Services of child day care providers; ~~including authorizing the department to deny an application for or suspend or revoke any license, registration, or special permit, if the licensee, or specified other individuals, is convicted of one of a list of specified crimes. Under existing law, the department is also authorized to contract with state, county, or other public agencies to assume specified licensing, approval, or consultation responsibilities. The willful or repeated violation of any existing provision relating to the licensure and operation of child day care services providers, or any rule or regulation promulgated thereunder, is a misdemeanor.~~

~~This bill would expand the grounds for license denial, suspension, or revocation to include the commission of any felony within 10 years of application for licensure, or the commission of 2 or more felonies by a licensee, or other~~

~~specified persons. The bill would require the department, or an agency that has contracted with the department, to maintain a listing of all criminal convictions on record for licensed child care providers, and to make the listing available to parents upon request, pursuant to a procedure established by the department. Existing law requires that, unless the department grants an exemption, a license shall be denied for the operation of a child day care facility if the applicant or specified persons have been convicted of a crime, other than a minor traffic violation. The director is authorized to grant an exemption under this provision if the director has substantial and convincing evidence to support a reasonable belief that the person convicted of the crime is of that good character to justify issuance of the license or granting of an exemption.~~

This bill would require the director, in granting an exemption under this provision, to consider as a positive circumstance that the conviction occurred more than 10 years prior to the application and the conviction was for a nonviolent offense, as determined by the director.

Existing law prohibits the granting of an exemption under these provisions if the conviction was for specified offenses.

This bill would add to the specified offenses for which an exemption is prohibited.

This bill would require a child day care facility to allow, upon request, a parent or a member of the public to view certain documentation that the status of the subject of a criminal background check is cleared or exempted. By creating a new crime, 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:

1 ~~SECTION 1. Section 1596.8775 is added to the Health
2 and Safety Code, to read:~~

3 ~~1596.8775. The department shall maintain a statewide
4 listing of all criminal convictions on record for licensed
5 child care providers, and shall make the listing available
6 to parents upon request, pursuant to a procedure
7 established by the department. Any local agency that has
8 contracted with the department pursuant to Section
9 1596.82 shall maintain a similar listing for those child care
10 providers within the local agency's jurisdiction.~~

11 ~~SEC. 2. Section 1596.885 of the Health and Safety
12 Code is amended to read:~~

13 ~~1596.885. The department may deny an application
14 for or suspend or revoke any license, registration, or
15 special permit issued under this act upon any of the
16 following grounds and in the manner provided in this act:~~

17 ~~(a) Violation by the licensee, registrant, or holder of a
18 special permit of this act or of the rules and regulations
19 promulgated under this act.~~

20 ~~(b) Aiding, abetting, or permitting the violating of this
21 act or of the rules and regulations promulgated under this
22 act.~~

23 ~~(c) Conduct which is inimical to the health, morals,
24 welfare, or safety of either an individual in or receiving
25 services from the facility or the people of this state.~~

26 ~~(d) (1) The conviction of a licensee, or other person
27 specified in Section 1596.871, at any time before or during
28 licensure, of a crime as defined in Section 1596.871.~~

29 ~~(2) The conviction of a licensee, or other person
30 specified in Section 1596.871, within 10 years of
31 application for licensure, of any felony.~~

32 ~~(3) The conviction of a licensee or other person
33 specified in Section 1596.871 of two or more felonies.~~

34 ~~(e) Engaging in acts of financial malfeasance
35 concerning the operation of a facility, including, but not
36 limited to, improper use or embezzlement of client
37 moneys and property or fraudulent appropriation for
38 personal gain of facility moneys and property, or willful~~



1 ~~or negligent failure to provide services for the care of~~
2 ~~clients.~~

3 *SECTION 1. Section 1596.871 of the Health and*
4 *Safety Code is amended to read:*

5 1596.871. The Legislature recognizes the need to
6 generate timely and accurate positive fingerprint
7 identification of applicants as a condition of issuing
8 licenses, permits, or certificates of approval for persons to
9 operate or provide direct care services in a child care
10 center or family child care home. Therefore, the
11 Legislature supports the use of the fingerprint live-scan
12 technology, as defined in the long-range plan of the
13 Department of Justice for fully automating the processing
14 of fingerprints and other data by the year 1999, otherwise
15 known as the California Crime Information Intelligence
16 System (CAL-CII), to be used for applicant fingerprints.
17 It is the intent of the Legislature in enacting this section
18 to require the fingerprints of those individuals whose
19 contact with child day care facility clients may pose a risk
20 to the children's health and safety.

21 (a) Before issuing a license or special permit to any
22 person to operate or manage a day care facility, the
23 department shall secure from an appropriate law
24 enforcement agency a criminal record to determine
25 whether the applicant or any other person specified in
26 subdivision (b) has ever been convicted of a crime other
27 than a minor traffic violation or arrested for any crime
28 specified in Section 290 of the Penal Code, for violating
29 Section 245 or 273.5, subdivision (b) of Section 273a or,
30 prior to January 1, 1994, paragraph (2) of Section 273a of
31 the Penal Code, or for any crime for which the
32 department cannot grant an exemption if the person was
33 convicted and the person has not been exonerated. That
34 criminal history information shall include the full
35 criminal record, if any, of those persons, and subsequent
36 arrest information pursuant to Section 11105.2 of the
37 Penal Code. No fee shall be charged by the Department
38 of Justice or the department for the fingerprinting of an
39 applicant who will serve six or fewer children or any
40 family day care applicant for a license, or for obtaining a



1 criminal record of an applicant pursuant to this section.
2 The following shall apply to the criminal record
3 information:

4 (1) If the State Department of Social Services finds
5 that the applicant or any other person specified in
6 subdivision (b) has been convicted of a crime, other than
7 a minor traffic violation, the application shall be denied,
8 unless the director grants an exemption pursuant to
9 subdivision (f).

10 (2) If the State Department of Social Services finds
11 that the applicant, or any person specified in subdivision
12 (b), is awaiting trial for a crime other than a minor traffic
13 violation, the State Department of Social Services shall
14 cease processing the application until the conclusion of
15 the trial.

16 (3) If no criminal record information has been
17 recorded, the Department of Justice shall provide the
18 applicant and the State Department of Social Services
19 with a statement of that fact.

20 (4) If the State Department of Social Services finds
21 after licensure that the licensee, or any other person
22 specified in paragraph (2) of subdivision (b), has been
23 convicted of a crime other than a minor traffic violation,
24 the license may be revoked, unless the director grants an
25 exemption pursuant to subdivision (f).

26 (5) An applicant and any person specified in
27 subdivision (b) shall submit a second set of fingerprints
28 to the Department of Justice, for the purpose of searching
29 the records of the Federal Bureau of Investigation, in
30 addition to the search required by subdivision (a). If an
31 applicant meets all other conditions for licensure, except
32 receipt of the Federal Bureau of Investigation's criminal
33 history information for the applicant and persons listed in
34 subdivision (b), the department may issue a license if the
35 applicant and each person described by subdivision (b)
36 has signed and submitted a statement that he or she has
37 never been convicted of a crime in the United States,
38 other than a traffic infraction as defined in paragraph (1)
39 of subdivision (a) of Section 42001 of the Vehicle Code.
40 If, after licensure, the department determines that the



1 licensee or person specified in subdivision (b) has a
2 criminal record, the license may be revoked pursuant to
3 Section 1596.885. The department may also suspend the
4 license pending an administrative hearing pursuant to
5 Section 1596.886.

6 (b) (1) In addition to the applicant, this section shall
7 be applicable to criminal convictions of the following
8 persons:

9 (A) Adults responsible for administration or direct
10 supervision of staff.

11 (B) Any person, other than a child, residing in the
12 facility.

13 (C) Any person who provides care and supervision to
14 the children.

15 (D) Any staff person, volunteer, or employee who has
16 contact with the children.

17 (i) A volunteer providing time-limited specialized
18 services, shall be exempt from the requirements of this
19 subdivision if this person is directly supervised by the
20 licensee or a facility employee with a criminal record
21 clearance or exemption, the volunteer spends no more
22 than 16 hours per week at the facility, and the volunteer
23 is not left alone with children in care.

24 (ii) A student enrolled or participating at an
25 accredited educational institution shall be exempt from
26 the requirements of this subdivision if the student is
27 directly supervised by the licensee or a facility employee
28 with a criminal record clearance or exemption, the
29 facility has an agreement with the educational institution
30 concerning the placement of the student, the student
31 spends no more than 16 hours per week at the facility, and
32 the student is not left alone with children in care.

33 (iii) A volunteer who is a relative, legal guardian, or
34 foster parent of a client in the facility shall be exempt
35 from the requirements of this subdivision.

36 (iv) A contracted repair person retained by the
37 facility, if not left alone with children in care, shall be
38 exempt from the requirements of this subdivision.

39 (E) If the applicant is a firm, partnership, association,
40 or corporation, the chief executive officer, other person



1 serving in like capacity, or a person designated by the
2 chief executive officer as responsible for the operation of
3 the facility, as designated by the applicant agency.

4 (F) If the applicant is a local educational agency, the
5 president of the governing board, the school district
6 superintendent, or a person designated to administer the
7 operation of the facility, as designated by the local
8 educational agency.

9 (G) Additional officers of the governing body of the
10 applicant, or other persons with a financial interest in the
11 applicant, as determined necessary by the department by
12 regulation. The criteria used in the development of these
13 regulations shall be based on the person's capability to
14 exercise substantial influence over the operation of the
15 facility.

16 (H) This section does not apply to employees of child
17 care and development programs under contract with the
18 State Department of Education who have completed a
19 criminal records clearance as part of an application to the
20 Commission on Teacher Credentialing, and who possess
21 a current credential or permit issued by the commission,
22 including employees of child care and development
23 programs that serve both children subsidized under, and
24 children not subsidized under, a State Department of
25 Education contract. The Commission on Teacher
26 Credentialing shall notify the department upon
27 revocation of a current credential or permit issued to an
28 employee of a child care and development program
29 under contract with the State Department of Education.

30 (I) This section does not apply to employees of a child
31 care and development program operated by a school
32 district, county office of education, or community college
33 district under contract with the State Department of
34 Education who have completed a criminal records
35 clearance as a condition of employment. The school
36 district, county office of education, or community college
37 district upon receiving information that the status of an
38 employee's criminal record clearance has changed shall
39 submit that information to the department.



1 (2) Nothing in this subdivision shall prevent a licensee
2 from requiring a criminal record clearance of any
3 individuals exempt from the requirements under this
4 subdivision.

5 (c) (1) (A) Subsequent to initial licensure, any
6 person specified in subdivision (b) and not exempted
7 from fingerprinting shall, as a condition to employment,
8 residence, or presence in a child day care facility be
9 fingerprinted and sign a declaration under penalty of
10 perjury regarding any prior criminal conviction. The
11 licensee shall submit these fingerprints to the
12 Department of Justice, along with a second set of
13 fingerprints for the purpose of searching the records of
14 the Federal Bureau of Investigation, or to comply with
15 paragraph (1) of subdivision (h), prior to the person's
16 employment, residence, or initial presence in the child
17 day care facility.

18 (B) These fingerprints shall be on a card provided by
19 the State Department of Social Services for the purpose
20 of obtaining a permanent set of fingerprints and
21 submitted to the Department of Justice by the licensee or
22 sent by electronic transmission in a manner approved by
23 the State Department of Social Services. A licensee's
24 failure to submit fingerprints to the Department of
25 Justice, or to comply with paragraph (1) of subdivision
26 (h), as required in this section, shall result in the citation
27 of a deficiency, and an immediate assessment of civil
28 penalties in the amount of one hundred dollars (\$100) per
29 violation. The State Department of Social Services may
30 assess civil penalties for continued violations permitted
31 by Sections 1596.99 and 1597.62. The fingerprints shall
32 then be submitted to the State Department of Social
33 Services for processing. Within 14 calendar days of the
34 receipt of the fingerprints, the Department of Justice
35 shall notify the State Department of Social Services of the
36 criminal record information, as provided in this
37 subdivision. If no criminal record information has been
38 recorded, the Department of Justice shall provide the
39 licensee and the State Department of Social Services with
40 a statement of that fact within 14 calendar days of receipt



1 of the fingerprints. If new fingerprints are required for
2 processing, the Department of Justice shall, within 14
3 calendar days from the date of receipt of the fingerprints,
4 notify the licensee that the fingerprints were illegible.

5 (C) Documentation of the individual's clearance or
6 exemption shall be maintained by the licensee, and shall
7 be available for inspection. When live-scan technology is
8 operational, as defined in Section 1522.04, the
9 Department of Justice shall notify the department, as
10 required by that section, and notify the licensee by mail
11 within 14 days of electronic transmission of the
12 fingerprints to the Department of Justice, if the person
13 has no criminal record. Any violation of the regulations
14 adopted pursuant to Section 1522.04 shall result in the
15 citation of a deficiency and an immediate assessment of
16 civil penalties in the amount of one hundred dollars
17 (\$100) per violation. The department may assess civil
18 penalties for continued violations, as permitted by
19 Sections 1596.99 and 1597.62.

20 (2) Except for persons specified in paragraph (2) of
21 subdivision (b), the licensee shall endeavor to ascertain
22 the previous employment history of persons required to
23 be fingerprinted under this subdivision. If it is
24 determined by the department, on the basis of
25 fingerprints submitted to the Department of Justice, that
26 the person has been convicted of a sex offense against a
27 minor, an offense specified in Section 243.4, 273a, or 273d,
28 subdivision (a) or (b) of Section 368 of the Penal Code,
29 or a felony, the State Department of Social Services shall
30 notify the licensee to act immediately to terminate the
31 person's employment, remove the person from the child
32 day care facility, or bar the person from entering the child
33 day care facility. The department may subsequently
34 grant an exemption pursuant to subdivision (f). If the
35 conviction was for another crime except a minor traffic
36 violation, the licensee shall, upon notification by the State
37 Department of Social Services, act immediately to either
38 (1) terminate the person's employment, remove the
39 person from the child day care facility, or bar the person
40 from entering the child day care facility; or (2) seek an



1 exemption pursuant to subdivision (f). The department
2 shall determine if the person shall be allowed to remain
3 in the facility until a decision on the exemption is
4 rendered. A licensee's failure to comply with the
5 department's prohibition of employment, contact with
6 clients, or presence in the facility as required by this
7 paragraph shall be grounds for disciplining the licensee
8 pursuant to Section 1596.885 or 1596.886.

9 (3) The department may issue an exemption on its
10 own motion pursuant to subdivision (f) if the person's
11 criminal history indicates that the person is of good
12 character based on the age, seriousness, and frequency of
13 the conviction or convictions. The department, in
14 consultation with interested parties, shall develop
15 regulations to establish the criteria to grant an exemption
16 pursuant to this paragraph.

17 (4) Concurrently with notifying the licensee pursuant
18 to paragraph (3), the department shall notify the affected
19 individual of his or her right to seek an exemption
20 pursuant to subdivision (f). The individual may seek an
21 exemption only if the licensee terminates the person's
22 employment or removes the person from the facility after
23 receiving notice from the department pursuant to
24 paragraph (3).

25 (d) (1) For purposes of this section or any other
26 provision of this chapter, a conviction means a plea or
27 verdict of guilty or a conviction following a plea of nolo
28 contendere. Any action which the department is
29 permitted to take following the establishment of a
30 conviction may be taken when the time for appeal has
31 elapsed, or the judgment of conviction has been affirmed
32 on appeal or when an order granting probation is made
33 suspending the imposition of sentence, notwithstanding
34 a subsequent order pursuant to Sections 1203.4 and
35 1203.4a of the Penal Code permitting the person to
36 withdraw his or her plea of guilty and to enter a plea of
37 not guilty, or setting aside the verdict of guilty, or
38 dismissing the accusation, information, or indictment.
39 For purposes of this section or any other provision of this
40 chapter, the record of a conviction, or a copy thereof



1 certified by the clerk of the court or by a judge of the
2 court in which the conviction occurred, shall be
3 conclusive evidence of the conviction. For purposes of
4 this section or any other provision of this chapter, the
5 arrest disposition report certified by the Department of
6 Justice, or documents admissible in a criminal action
7 pursuant to Section 969b of the Penal Code, shall be prima
8 facie evidence of conviction, notwithstanding any other
9 provision of law prohibiting the admission of these
10 documents in a civil or administrative action.

11 (2) For purposes of this section or any other provision
12 of this chapter, the department shall consider criminal
13 convictions from another state or federal court as if the
14 criminal offense was committed in this state.

15 (e) The State Department of Social Services shall not
16 use a record of arrest to deny, revoke, or terminate any
17 application, license, employment, or residence unless the
18 department investigates the incident and secures
19 evidence, whether or not related to the incident of arrest,
20 that is admissible in an administrative hearing to establish
21 conduct by the person that may pose a risk to the health
22 and safety of any person who is or may become a client.
23 The State Department of Social Services is authorized to
24 obtain any arrest or conviction records or reports from
25 any law enforcement agency as necessary to the
26 performance of its duties to inspect, license, and
27 investigate community care facilities and individuals
28 associated with a community care facility.

29 (f) (1) (A) After review of the record, the director
30 may grant, *except as prohibited in paragraph (2)*, an
31 exemption from disqualification for a license or special
32 permit as specified in paragraphs (1) and (4) of
33 subdivision (a), or for employment, residence, or
34 presence in a child day care facility as specified in
35 paragraphs (3), (4), and (5) of subdivision (c) if the
36 director has substantial and convincing evidence to
37 support a reasonable belief that the applicant and the
38 person convicted of the crime, if other than the applicant,
39 are of good character so as to justify issuance of the license



1 or special permit or granting an exemption for purposes
2 of subdivision (c). ~~However, no~~

3 (B) *The director, in granting an exemption under this*
4 *paragraph, shall consider as a positive circumstance that*
5 *the conviction occurred more than 10 years prior to the*
6 *application and the conviction was for a nonviolent*
7 *offense, as determined by the director.*

8 (2) No exemption shall be granted pursuant to this
9 subdivision if the conviction was for—~~an~~ any of the
10 following offenses.

11 (A) An offense specified in Section 220, 243.4, or 264.1,
12 subdivision (a) of Section 273a or, prior to January 1, 1994,
13 paragraph (1) of Section 273a, Section 273d, 288, or 289,
14 subdivision (a) of Section 290, or subdivision (a) or (b) of
15 Section 368 of the Penal Code, or was a conviction of
16 another crime against an individual specified in
17 subdivision (c) of Section 667.5 of the Penal Code.

18 (B) *A felony offense as specified in Section 729 of the*
19 *Business and Professions Code, or subdivision (a) of*
20 *Section 193, Section 206, subdivision (a) of Section 215*
21 *committed in violation of subdivision (b) of Section*
22 *12022, Section 273d, subdivision (a) of Section 347,*
23 *subdivision (b) of Section 417, or subdivision (a) of*
24 *Section 597 of the Penal Code, or a felony or misdemeanor*
25 *offense as specified in subdivision (d) of Section 368, or*
26 *subdivisions (a), (b), or (c) of Section 646.9 of the Penal*
27 *Code.*

28 (C) *A misdemeanor offense as specified in Section*
29 *273d, Section 273g, or subdivision (d) of Section 368 of the*
30 *Penal Code.*

31 ~~(2)~~

32 (3) The department shall not prohibit a person from
33 being employed or having contact with clients in a facility
34 on the basis of a denied criminal record exemption
35 request or arrest information unless the department
36 complies with the requirements of Section 1596.8897.

37 (g) Upon request of the licensee, who shall enclose a
38 self-addressed stamped postcard for this purpose, the
39 Department of Justice shall verify receipt of the
40 fingerprints.



1 (h) (1) For the purposes of compliance with this
2 section, the department may permit an individual to
3 transfer a current criminal records clearance, as defined
4 in subdivision (a), from one facility to another, as long as
5 the criminal record clearance has been processed
6 through a state licensing district office, and is being
7 transferred to another state licensing district office. The
8 request shall be in writing to the department, and shall
9 include a copy of the person's driver's license or valid
10 identification card issued by the Department of Motor
11 Vehicles, or a valid photo identification issued by another
12 state or the United States government if the person is not
13 a California resident. Upon request of the licensee, who
14 shall enclose a self-addressed stamped envelope for this
15 purpose, the department shall verify whether the
16 individual has a clearance that can be transferred.

17 (2) The State Department of Social Services shall hold
18 criminal records clearances in its active files for a
19 minimum of two years after an employee is no longer
20 employed at a licensed facility in order for the criminal
21 records clearances to be transferred.

22 (i) Amendments to this section made in the 1998
23 calendar year shall be implemented commencing 60 days
24 after the effective date of the act amending this section
25 in the 1998 calendar year, except those provisions for the
26 submission of fingerprints for searching the records of the
27 Federal Bureau of Investigation, which shall be
28 implemented commencing January 1, 1999.

29 *SEC. 2. Section 1596.8775 is added to the Health and
30 Safety Code, to read:*

31 *1596.8775. A child day care facility shall allow, upon
32 request, a parent or a member of the public to view
33 documentation provided by the Department of Justice or
34 the Community Care Licensing Division of the
35 department that notifies the licensee of the facility,
36 following a criminal background check, that the status of
37 the subject of the criminal background check is cleared
38 or exempted.*

39 *SEC. 3. No reimbursement is required by this act
40 pursuant to Section 6 of Article XIII B of the California*



1 Constitution because the only costs that may be incurred
2 by a local agency or school district will be incurred
3 because this act creates a new crime or infraction,
4 eliminates a crime or infraction, or changes the penalty
5 for a crime or infraction, within the meaning of Section
6 17556 of the Government Code, or changes the definition
7 of a crime within the meaning of Section 6 of Article
8 XIII B of the California Constitution.

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