

AMENDED IN SENATE AUGUST 23, 2004
AMENDED IN SENATE JANUARY 26, 2004
AMENDED IN SENATE SEPTEMBER 3, 2003
AMENDED IN SENATE AUGUST 18, 2003
AMENDED IN SENATE JUNE 30, 2003
AMENDED IN SENATE JUNE 23, 2003
AMENDED IN SENATE JUNE 5, 2003
AMENDED IN ASSEMBLY APRIL 22, 2003
AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 366

Introduced by Assembly Member Mullin

February 14, 2003

An act to amend Sections 1502 and 1522.02 of, *and to add Sections 1596.7912 and 1596.7991 to*, the Health and Safety Code, relating to care facilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 366, as amended, Mullin. Child care: substitute employee registry.

Existing law authorizes the State Department of Social Services to adopt regulations to create substitute employee registries for persons

working at more than one facility licensed by the department, in order to permit these registries to submit fingerprint cards and child abuse index information for child care registries.

This bill would authorize the department to adopt the above regulations in order to permit these registries, instead, to submit fingerprint images and related information to the Department of Justice, in accordance with prescribed provisions, for workers who are associated with the registries, and would require the Department of Justice to assess all processing fees associated with these provisions. It would also require that the responses from the Department of Justice be provided to the department, and would permit these responses to include information from specified sources.

Existing law additionally authorizes the department to operate a substitute child care employee registry pilot program for the above purposes, pursuant to specified criteria, and to charge a reasonable annual licensing fee to participating registry facilities.

This bill, instead, would require, until January 1, ~~2007~~ 2008, the department to operate this substitute child care employee registry pilot program, and on and after that date, would authorize the department, in its discretion, to operate the pilot program. The bill would require the department to provide each registry under the pilot program with a facility number, and would require that the child care worker be registered with the registry, and not with an individual child care facility that temporarily employs the child care worker. *The bill would exempt the Department of Justice from processing criminal background checks submitted by registries as a result of the bill's requirements until July 1, 2005.* The bill would require the registry to maintain all employee records for a child care worker at ~~its central~~ *the office located in the region where services are provided*, subject to inspection ~~or electronic transfer to~~ *by the department if requested*. This bill also would authorize the department to adopt emergency regulations to implement the pilot program. *The bill would revise and expand requirements applicable to substitute employee registries, thereby changing the definition of an existing crime and imposing a state-mandated local program.*

The bill would define “substitute employee registry” for purposes of the California Community Care Facilities Act *and the California Child Day Care Act*.

Existing law permits the department to limit the pilot program to specified counties.



This bill would revise the list of counties that may participate in the pilot program *and would require the department to limit the pilot project to those counties.*

The bill would require the department to report to the Legislature by ~~March 31, 2004~~ *May 1, 2005*, specified information concerning the pilot program.

This bill would declare legislative intent to reallocate certain unearned contract funds to cover costs associated with the substitute employee registry project.

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.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) It is in the interest of the safety of children and the quality
4 of their care to maintain the teacher and child staff ratios in child
5 care centers and schools as required by current law.

6 (b) Substitute employee registries are a valuable resource for
7 filling vacancies with fully qualified substitute employees.

8 ~~(c) The licensing and oversight of substitute employee~~
9 ~~registries are within the purview of quality initiatives in the state's~~
10 ~~plan under the Child Care and Development Fund as provided by~~
11 ~~the Congress of the United States.~~

12 (c) *The licensing and oversight of substitute employee*
13 *registries are within the general purview of the state's plan under*
14 *the Child Care and Development Fund as provided by the*
15 *Congress of the United States. Nothing in this act shall require or*
16 *appropriate additional federal quality initiative funds to the State*
17 *Department of Education to subsequently augment the State*



1 *Department of Social Services funding for licensing oversight of*
2 *these registries and their employees.*

3 SEC. 2. Section 1502 of the Health and Safety Code is
4 amended to read:

5 1502. As used in this chapter:

6 (a) “Community care facility” means any facility, place, or
7 building that is maintained and operated to provide nonmedical
8 residential care, day treatment, adult day care, or foster family
9 agency services for children, adults, or children and adults,
10 including, but not limited to, the physically handicapped, mentally
11 impaired, incompetent persons, and abused or neglected children,
12 and includes the following:

13 (1) “Residential facility” means any family home, group care
14 facility, or similar facility determined by the director, for 24-hour
15 nonmedical care of persons in need of personal services,
16 supervision, or assistance essential for sustaining the activities of
17 daily living or for the protection of the individual.

18 (2) “Adult day program” means any community-based facility
19 or program that provides care to persons 18 years of age or older
20 in need of personal services, supervision, or assistance essential
21 for sustaining the activities of daily living or for the protection of
22 these individuals on less than a 24-hour basis.

23 (3) “Therapeutic day services facility” means any facility that
24 provides nonmedical care, counseling, educational or vocational
25 support, or social rehabilitation services on less than a 24-hour
26 basis to persons under 18 years of age who would otherwise be
27 placed in foster care or who are returning to families from foster
28 care. Program standards for these facilities shall be developed by
29 the department, pursuant to Section 1530, in consultation with
30 therapeutic day services and foster care providers.

31 (4) “Foster family agency” means any organization engaged
32 in the recruiting, certifying, and training of, and providing
33 professional support to, foster parents, or in finding homes or other
34 places for placement of children for temporary or permanent care
35 who require that level of care as an alternative to a group home.
36 Private foster family agencies shall be organized and operated on
37 a nonprofit basis.

38 (5) “Foster family home” means any residential facility
39 providing 24-hour care for six or fewer foster children that is
40 owned, leased, or rented and is the residence of the foster parent



1 or parents, including their family, in whose care the foster children
2 have been placed. The placement may be by a public or private
3 child placement agency or by a court order, or by voluntary
4 placement by a parent, parents, or guardian. It also means a foster
5 family home described in Section 1505.2.

6 (6) “Small family home” means any residential facility, in the
7 licensee’s family residence, that provides 24-hour care for six or
8 fewer foster children who have mental disorders or developmental
9 or physical disabilities and who require special care and
10 supervision as a result of their disabilities. A small family home
11 may accept children with special health care needs, pursuant to
12 subdivision (a) of Section 17710 of the Welfare and Institutions
13 Code. In addition to placing children with special health care
14 needs, the department may approve placement of children without
15 special health care needs, up to the licensed capacity.

16 (7) “Social rehabilitation facility” means any residential
17 facility that provides social rehabilitation services for no longer
18 than 18 months in a group setting to adults recovering from mental
19 illness who temporarily need assistance, guidance, or counseling.
20 Program components shall be subject to program standards
21 pursuant to Article 1 (commencing with Section 5670) of Chapter
22 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.

23 (8) “Community treatment facility” means any residential
24 facility that provides mental health treatment services to children
25 in a group setting and that has the capacity to provide secure
26 containment. Program components shall be subject to program
27 standards developed and enforced by the State Department of
28 Mental Health pursuant to Section 4094 of the Welfare and
29 Institutions Code.

30 Nothing in this section shall be construed to prohibit or
31 discourage placement of persons who have mental or physical
32 disabilities into any category of community care facility that meets
33 the needs of the individual placed, if the placement is consistent
34 with the licensing regulations of the department.

35 (9) “Full-service adoption agency” means any licensed entity
36 engaged in the business of providing adoption services, that does
37 all of the following:

38 (A) Assumes care, custody, and control of a child through
39 relinquishment of the child to the agency or involuntary
40 termination of parental rights to the child.



1 (B) Assesses the birth parents, prospective adoptive parents, or
2 child.

3 (C) Places children for adoption.

4 (D) Supervises adoptive placements.

5 Private full-service adoption agencies shall be organized and
6 operated on a nonprofit basis.

7 (10) “Noncustodial adoption agency” means any licensed
8 entity engaged in the business of providing adoption services, that
9 does all of the following:

10 (A) Assesses the prospective adoptive parents.

11 (B) Cooperatively matches children freed for adoption, who
12 are under the care, custody, and control of a licensed adoption
13 agency, for adoption, with assessed and approved adoptive
14 applicants.

15 (C) Cooperatively supervises adoptive placements with a
16 full-service adoptive agency, but does not disrupt a placement or
17 remove a child from a placement.

18 Private noncustodial adoption agencies shall be organized and
19 operated on a nonprofit basis.

20 (11) “Transitional shelter care facility” means any group care
21 facility that provides for 24-hour nonmedical care of persons in
22 need of personal services, supervision, or assistance essential for
23 sustaining the activities of daily living or for the protection of the
24 individual. Program components shall be subject to program
25 standards developed by the State Department of Social Services
26 pursuant to Section 1502.3.

27 (12) “Transitional housing placement facility” means a
28 community care facility licensed by the department pursuant to
29 Section 1559.110 to provide transitional housing opportunities to
30 persons at least 17 years of age, and not more than 18 years of age
31 unless the requirements of Section 11403 of the Welfare and
32 Institutions Code are met, who are in out-of-home placement
33 under the supervision of the county department of social services
34 or the county probation department, and who are participating in
35 an independent living program.

36 (13) “Substitute employee registry” means any organization
37 licensed pursuant to Section 1522.02 to provide cleared employees
38 to a community care facility on a temporary placement basis.

39 (b) “Department” or “state department” means the State
40 Department of Social Services.



1 (c) “Director” means the Director of Social Services.

2 SEC. 3. Section 1522.02 of the Health and Safety Code is
3 amended to read:

4 1522.02. ~~(a)–~~The department may adopt regulations to create
5 substitute employee registries for persons working at more than
6 one facility licensed pursuant to this chapter, Chapter 3.01
7 (commencing with Section 1568.01), Chapter 3.2 (commencing
8 with Section 1569), *or* Chapter 3.4 (commencing with Section
9 ~~1569.70~~), ~~Chapter 3.5 (commencing with Section 1596.90), or~~
10 ~~Chapter 3.6 (commencing with Section 1597.30), in order to–~~
11 ~~1569.70~~), *in order to* permit these registries to submit fingerprint
12 images and related information pursuant to Section 1596.871, to
13 the Department of Justice for workers who are associated with the
14 registries so that these facilities have available cleared care staff.
15 ~~Notwithstanding paragraph (3) of subdivision (a) of Section~~
16 ~~1596.871, the~~ The Department of Justice shall assess all
17 processing fees associated with this subdivision. The responses
18 from the Department of Justice shall be provided to the department
19 and may include information from its Criminal Index and
20 Identification (Cal-CII) system, the Federal Bureau of
21 Investigation and, if appropriate, the Child Abuse Central Index
22 pursuant to subparagraph (A) of paragraph (6) of subdivision (b)
23 of Section 11170 of the Penal Code.

24 ~~(b) (1) The department shall, until January 1, 2007, operate a~~
25 ~~substitute child care employee registry pilot program for the~~
26 ~~purposes of subdivision (a). On and after January 1, 2007, the~~
27 ~~department may, in its discretion, operate the substitute child care~~
28 ~~employee registry pilot program.~~

29 ~~(2) The department may charge participating registries a~~
30 ~~reasonable annual licensing fee. Except for fees associated with~~
31 ~~criminal background clearances, no licensing fees shall be charged~~
32 ~~to temporary employees of these registries.~~

33 ~~(3) The pilot program shall be subject to all of the following:~~

34 ~~(A) The pilot program shall be limited to screening employees~~
35 ~~for facilities licensed as child care facilities.~~

36 ~~(B) Registries may not hire or retain any child care worker for~~
37 ~~employment at a child care facility who requires an exemption~~
38 ~~from the criminal background clearance requirements of law.~~

39 ~~(C) The department shall only guarantee the authenticity of~~
40 ~~criminal background and child abuse index information that~~



1 registries provide to child care facilities. Any other information
2 about a child care worker shall be verified by the registry and
3 certified through a certificate issued by the registry.

4 (D) The department shall provide each registry with a facility
5 number. The child care worker shall be registered with the registry,
6 and not with the individual child care facility that temporarily
7 employs him or her. Each registry's facility number shall remain
8 valid unless suspended or revoked by the department in the manner
9 specified for other licensed community care facilities. Each
10 registry shall maintain all employee background and employment
11 records at its central office subject to physical inspection or
12 electronic transfer to the department if requested.

13 (E) The department may limit the pilot program to the Counties
14 of Alameda, Contra Costa, Orange, Sacramento, San Francisco,
15 San Mateo, and Santa Clara.

16 (e) The department may adopt emergency regulations to
17 implement subdivision (b). The adoption, amendment, repeal, or
18 readoption of a regulation authorized by this subdivision is
19 deemed to be necessary for the immediate preservation of the
20 public peace, health and safety, or general welfare, for purposes of
21 Sections 11346.1 and 11349.6 of the Government Code, and the
22 department is hereby exempted from the requirement that it
23 describe specific facts showing the need for immediate action. For
24 purposes of subdivision (e) of Section 11346.1 of the Government
25 Code, the 120-day period, as applicable to the effective period of
26 an emergency regulatory action and submission of specified
27 materials to the Office of Administrative Law, is hereby extended
28 to 180 days.

29 SEC. 4. Section 1596.7912 is added to the Health and Safety
30 Code, to read:

31 1596.7912. "Substitute employee registry" means any
32 organization licensed pursuant to Section 1522.02 to provide
33 cleared employees to a child care facility on a temporary
34 placement basis.

35 SEC. 5. Section 1596.7991 is added to the Health and Safety
36 Code, to read:

37 1596.7991. (a) The department shall, until January 1, 2008,
38 operate a substitute child care employee registry pilot program for
39 the purposes of subdivision (b). Notwithstanding paragraph (1) of
40 subdivision (b), on and after January 1, 2008, the department may,



1 *in its discretion, operate the substitute child care employee registry*
2 *pilot program.*

3 *(b) (1) The department shall adopt regulations to create a*
4 *substitute employee registry pilot program for persons working at*
5 *more than one facility licensed pursuant to this chapter, Chapter*
6 *3.5 (commencing with Section 1596.90), or Chapter 3.6*
7 *(commencing with Section 1597.30), in order to permit these*
8 *registries to submit fingerprint images and related information,*
9 *pursuant to Section 1596.871, to the Department of Justice for*
10 *workers who are associated with the registries so that these*
11 *facilities have available cleared care staff. Notwithstanding*
12 *paragraph (3) of subdivision (a) of Section 1596.871, the*
13 *Department of Justice shall assess all processing fees associated*
14 *with this subdivision. Fees charged for background clearance*
15 *processing for a potential employee of a substitute employee*
16 *registry shall be no different than fees charged for background*
17 *clearance processing for a potential employee of a licensed child*
18 *care facility. The responses from the Department of Justice shall*
19 *be provided to the department and may include information from*
20 *its Criminal Index and Identification (Cal-CII) system, the*
21 *Federal Bureau of Investigation, and the Child Abuse Central*
22 *Index pursuant to subparagraph (A) of paragraph (6) of*
23 *subdivision (b) of Section 11170 of the Penal Code.*

24 *(2) (A) The department shall charge participating registries a*
25 *reasonable application fee and a reasonable annual licensing fee*
26 *for each office within the region in which they are providing*
27 *services, as identified in subparagraph (F) of paragraph (3). The*
28 *revenues collected from licensing fees pursuant to this section shall*
29 *be utilized by the department to support activities related to*
30 *monitoring facilities identified in Section 1596.7912 for*
31 *compliance with laws and regulations when appropriated for this*
32 *purpose. The revenues collected shall be used in addition to any*
33 *other funds appropriated in the annual Budget Act in support of the*
34 *licensing program.*

35 *(B) The department shall not utilize any portion of the licensing*
36 *revenues sooner than 30 days after notification in writing of the*
37 *purpose and use, as approved by the Department of Finance, to the*
38 *Chairperson of the Joint Legislative Budget Committee, and the*
39 *chairpersons of the committee in each house that considers*
40 *appropriations for each fiscal year. The department shall submit*



1 a budget change proposal to justify any new positions or any new
2 related support costs on an ongoing basis. However, nothing in this
3 subdivision shall prohibit the department from initiating the pilot
4 program if funding pursuant to Section 8278 of the Education
5 Code is made available to the department.

6 (C) Except for fees associated with criminal background
7 clearances, no licensing fees shall be charged to temporary
8 employees of these registries.

9 (3) The pilot program shall be subject to all of the following:

10 (A) The pilot program shall be limited to screening employees
11 for facilities licensed as child care facilities.

12 (B) A registry may not hire or retain any child care worker for
13 employment at a child care facility who is not eligible for an
14 exemption or who requires an exemption from the criminal
15 background clearance requirements of law. Notwithstanding
16 paragraph (4) of subdivision (c) of Section 1596.871, a child care
17 worker who is an applicant for employment with a registry or a
18 child care worker associated with a registry may not seek an
19 exemption on his or her own behalf.

20 (C) The department shall only guarantee the authenticity of
21 criminal background and child abuse index information that is
22 provided to the registries. Any other information about a child care
23 worker shall be verified by the registry and certified through a
24 certificate issued by the registry.

25 (D) A registry shall maintain an office in each region in which
26 the registry provides services, as identified in subparagraph (F).
27 Each registry shall maintain employee background and
28 employment records at the registry's office located in the region
29 where services are provided. All files are subject to inspection by
30 the department.

31 (E) The department shall provide qualified registry applicants
32 with a facility number for each office in each region in which the
33 registry provides services, as indicated in subparagraph (D). The
34 child care worker shall be associated with the registry, and not with
35 the individual child care facility that temporarily employs him or
36 her. Each registry's facility number shall remain valid unless
37 suspended or revoked by the department in the manner specified
38 for other licensed community care facilities or until the department
39 terminates the pilot program.



1 (F) The department shall limit the pilot program to the
2 Counties of Alameda, Contra Costa, Orange, Sacramento, San
3 Francisco, San Mateo, and Santa Clara. For purposes of this pilot
4 program, regions are identified as follows: Region 1-Sacramento
5 County; Region 2-Orange County; Region 3-Alameda, Contra
6 Costa, San Francisco, San Mateo, and Santa Clara Counties. A
7 registry may not offer or provide substitute employee registry
8 services to child care facilities located outside the pilot counties.
9 Nothing in this subdivision shall limit any pilot registry from
10 offering standard employment agency services in any county of
11 California.

12 (G) A registry shall be subject to all provisions of this chapter
13 relating to administrative actions, criminal sanctions, citations,
14 and civil penalties.

15 (c) The department shall adopt emergency regulations to
16 implement subdivision (a). The adoption, amendment, repeal, or
17 readoption of a regulation authorized by this subdivision is
18 deemed to be necessary for the immediate preservation of the
19 public peace, health and safety, or general welfare, for purposes
20 of Sections 11346.1 and 11349.6 of the Government Code, and the
21 department is hereby exempted from the requirement that it
22 describe specific facts showing the need for immediate action. For
23 purposes of subdivision (e) of Section 11346.1 of the Government
24 Code, the 120-day period, as applicable to the effective period of
25 an emergency regulatory action and submission of specified
26 materials to the Office of Administrative Law, is hereby extended
27 to 180 days.

28 SEC. 6. The State Department of Social Services shall report
29 to the Legislature, by ~~March 31, 2004~~ May 1, 2005, whether state
30 personnel are filling the authorized positions for the substitute
31 child care employee registry pilot program, including the
32 proportion of each person's time allocated to the substitute
33 employee registry (SER) project, the number of counties and
34 substitute employee registries participating in the pilot program as
35 of February 28, 2004, and any barriers encountered in the
36 implementation of the pilot program. A copy of any emergency
37 regulations adopted by the State Department of Social Services
38 pursuant to Section ~~1522.02~~ 1596.7991 of the Health and Safety
39 Code shall also be transmitted with the report.

40 SEC. 5.—



1 *SEC. 7. (a) It is the intent of the Legislature to support the*
2 *State Department of Social Services personnel and oversight costs,*
3 *and any report to the Legislature, associated with the substitute*
4 *employee registry pilot project, as provided in Section 1596.7991*
5 *of the Health and Safety Code, by the reallocation of unearned*
6 *contract funds, pursuant to Section 8278 of the Education Code.*
7 *This is intended to be the first expenditure of any funds of this*
8 *nature authorized by the Budget Act for one-time use for child*
9 *development programs. However, these funds are intended to be in*
10 *addition to any existing quality expenditures.*

11 *(b) It is the intent of the Legislature that the allocation of these*
12 *funds shall be accomplished by interagency agreement between*
13 *the State Department of Education and the State Department of*
14 *Social Services and shall not exceed four hundred thousand*
15 *dollars (\$400,000) in any fiscal year. The amount of such*
16 *allocation is intended not to exceed the actual cost incurred, or*
17 *projected to be incurred, by the State Department of Social*
18 *Services less any licensing fees collected, or projected to be*
19 *collected, by the State Department of Social Services from*
20 *substitute employee registries pursuant to subparagraph (A) of*
21 *paragraph (2) of subdivision (b) of Section 1596.7991 during the*
22 *affected period.*

23 *(c) It is the intent of the Legislature to authorize this*
24 *reallocation, not to exceed four hundred thousand dollars*
25 *(\$400,000) in any fiscal year, on a year-by-year basis for the*
26 *duration of the child care substitute registry pilot project.*

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

36 *SEC. 9. To the extent that this act establishes a new class of*
37 *child care employees for substitute employment registries*
38 *pursuant to subdivision (b) of Section 1596.7991, and creates an*
39 *increased criminal background clearance caseload for the*
40 *Department of Justice, the department is not required to process*



1 *criminal background checks for those employees until July 1,*
2 *2005. To the extent that clearances for child care employees of*
3 *standard employment agencies are processed, or can be processed,*
4 *by the Department of Justice under any other provision of law, the*
5 *department shall continue to process those background checks*
6 *prior to July 1, 2005 and may charge the standard fee for that*
7 *service.*

8 *SEC. 10.* This act is an urgency statute necessary for the
9 immediate preservation of the public peace, health, or safety
10 within the meaning of Article IV of the Constitution and shall go
11 into immediate effect. The facts constituting the necessity are:

12 In order to expedite criminal background checks so as to enable
13 temporary child care employees to fill emergency vacancies in
14 child care facilities as soon as possible, it is necessary that this act
15 take effect immediately.

