

**Assembly Bill No. 366**

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Passed the Assembly August 26, 2004

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*Chief Clerk of the Assembly*

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Passed the Senate August 25, 2004

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

Second enrollment



## CHAPTER \_\_\_\_\_

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, 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, 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 the office located in the region where services are provided, subject to inspection by the department. 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 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.

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

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

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

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



(c) The licensing and oversight of substitute employee registries are within the general purview of the state's plan under the Child Care and Development Fund as provided by the Congress of the United States. Nothing in this act shall require or appropriate additional federal quality initiative funds to the State Department of Education to subsequently augment the State Department of Social Services funding for licensing oversight of these registries and their employees.

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

1502. As used in this chapter:

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

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

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

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

(4) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care



who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(5) “Foster family home” means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.

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

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

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

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



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

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

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

(C) Places children for adoption.

(D) Supervises adoptive placements.

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

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

(A) Assesses the prospective adoptive parents.

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

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

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

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

(12) “Transitional housing placement facility” means a community care facility licensed by the department pursuant to Section 1559.110 to provide transitional housing opportunities to persons at least 17 years of age, and not more than 18 years of age unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services



or the county probation department, and who are participating in an independent living program.

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

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

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

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

1522.02. The department may adopt regulations to create substitute employee registries for persons working at more than one facility licensed pursuant to this chapter, Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), or Chapter 3.4 (commencing with Section 1569.70), in order to permit these registries to submit fingerprint images and related information pursuant to Section 1596.871, to the Department of Justice for workers who are associated with the registries so that these facilities have available cleared care staff. The Department of Justice shall assess all processing fees associated with this subdivision. The responses from the Department of Justice shall be provided to the department and may include information from its Criminal Index and Identification (Cal-CII) system, the Federal Bureau of Investigation and, if appropriate, the Child Abuse Central Index pursuant to subparagraph (A) of paragraph (6) of subdivision (b) of Section 11170 of the Penal Code.

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

1596.7912. “Substitute employee registry” means any organization licensed pursuant to Section 1522.02 to provide cleared employees to a child care facility on a temporary placement basis.

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

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



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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

SEC. 7. (a) It is the intent of the Legislature to support the State Department of Social Services personnel and oversight costs,



and any report to the Legislature, associated with the substitute employee registry pilot project, as provided in Section 1596.7991 of the Health and Safety Code, by the reallocation of unearned contract funds, pursuant to Section 8278 of the Education Code. This is intended to be the first expenditure of any funds of this nature authorized by the Budget Act for one-time use for child development programs. However, these funds are intended to be in addition to any existing quality expenditures.

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

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

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

SEC. 9. To the extent that this act establishes a new class of child care employees for substitute employment registries pursuant to subdivision (b) of Section 1596.7991, and creates an increased criminal background clearance caseload for the Department of Justice, the department is not required to process criminal background checks for those employees until July 1, 2005. To the extent that clearances for child care employees of standard employment agencies are processed, or can be processed,



by the Department of Justice under any other provision of law, the department shall continue to process those background checks prior to July 1, 2005 and may charge the standard fee for that service.

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

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



Approved \_\_\_\_\_, 2004

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*Governor*

