

AMENDED IN SENATE AUGUST 9, 2004
AMENDED IN SENATE JUNE 17, 2004
AMENDED IN SENATE APRIL 22, 2004
AMENDED IN ASSEMBLY JANUARY 22, 2004
AMENDED IN ASSEMBLY MAY 7, 2003
AMENDED IN ASSEMBLY APRIL 28, 2003
CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1240

Introduced by Assembly Member Mullin

February 21, 2003

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, ~~and to amend Section 11105 of the Penal Code~~, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1240, as amended, Mullin. Care facilities: criminal record clearances.

Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license, permit, or certificate of approval, as appropriate, for a person to operate or to provide direct care services in a community care facility, residential care facility for persons with a chronic life-threatening illness, residential care facility for the elderly, or *child* day care facility, the fingerprinting of, and criminal record clearance for, applicants and

persons to be employed by, reside at, or be present in any of these facilities, except as specified.

~~This bill would authorize the Department of Justice to substitute or add either the State Department of Social Services or a county, acting as an agent of the State Department of Social Services, as an authorized recipient of an applicant's criminal history information.~~

Under existing law, an individual is required to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility. ~~Under existing law, a violation of that requirement results in the citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation. The department is authorized to assess additional civil penalties for continued violations. Existing law authorizes the department to permit an individual to transfer a current criminal record clearance, from one facility to another if certain conditions are met.~~

This bill would authorize, with respect to community care facilities and child day care facilities, any county office with department delegated licensing authority and the State Department of Social Services to accept a criminal record clearance or exemption from each other, and would authorize any county office with department delegated licensing authority to accept a criminal record clearance or exemption from another such county office.

Existing law authorizes the Department of Justice to provide subsequent arrest notification to any agency authorized to receive state summary criminal history information upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice.

This bill would, with respect to community care facilities and child day care facilities, specify conditions under which the Department of Justice would be required to substitute or add the department or another county with department delegated licensing authority as a recipient of notification under this provision.

Existing law specifies that a licensee's failure to submit fingerprints to the Department of Justice or to transfer a current criminal record clearance, when required, results in the citation of a deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation. The State Department of Social Services is authorized to assess additional civil penalties for continued violations.

Existing law specifies that a licensee's failure to comply with the department's prohibition of employment, contact with clients, or



presence in the facility shall be grounds for denying an application for, or suspending or revoking, a license.

This bill would enhance the penalties for violating any of the above provisions by providing that a violation results in a citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation, per day, for a maximum of 5 days, or for a maximum of 30 days in the case of a 2nd or subsequent violation, and by providing that a violation ~~be~~ *is* grounds for denying an application for, or suspending or revoking, a license or administrator certificate.

The bill, in addition, would impose these penalties for failure of a foster family agency to submit fingerprints that a foster family agency is required under existing law to obtain from certified home applicants or to transfer a current criminal record clearance, when required.

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 1522 of the Health and Safety Code is
2 amended to read:

3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, or a certified family
8 home of a licensed foster family agency. Therefore, the
9 Legislature supports the use of the fingerprint live-scan
10 technology, as identified in the long-range plan of the Department
11 of Justice for fully automating the processing of fingerprints and
12 other data by the year 1999, otherwise known as the California
13 Crime Information Intelligence System (CAL-CII), to be used for
14 applicant fingerprints. It is the intent of the Legislature in enacting
15 this section to require the fingerprints of those individuals whose
16 contact with community care clients may pose a risk to the clients'
17 health and safety.

18 (a) (1) Before issuing a license or special permit to any person
19 or persons to operate or manage a community care facility, the
20 State Department of Social Services shall secure from an
21 appropriate law enforcement agency a criminal record to
22 determine whether the applicant or any other person specified in



1 subdivision (b) has ever been convicted of a crime other than a
2 minor traffic violation or arrested for any crime specified in
3 Section 290 of the Penal Code, for violating Section 245 or 273.5
4 of the Penal Code, subdivision (b) of Section 273a of the Penal
5 Code, or, prior to January 1, 1994, paragraph (2) of Section 273a
6 of the Penal Code, or for any crime for which the department
7 cannot grant an exemption if the person was convicted and the
8 person has not been exonerated.

9 (2) The criminal history information shall include the full
10 criminal record, if any, of those persons, and subsequent arrest
11 information pursuant to Section 11105.2 of the Penal Code.

12 (3) Except during the 2003–04 fiscal year, neither the
13 Department of Justice nor the State Department of Social Services
14 may charge a fee for the fingerprinting of an applicant for a license
15 or special permit to operate a facility providing nonmedical board,
16 room, and care for six or less children or for obtaining a criminal
17 record of the applicant pursuant to this section.

18 (4) The following shall apply to the criminal record
19 information:

20 (A) If the State Department of Social Services finds that the
21 applicant, or any other person specified in subdivision (b), has
22 been convicted of a crime other than a minor traffic violation, the
23 application shall be denied, unless the director grants an
24 exemption pursuant to subdivision (g).

25 (B) If the State Department of Social Services finds that the
26 applicant, or any other person specified in subdivision (b) is
27 awaiting trial for a crime other than a minor traffic violation, the
28 State Department of Social Services may cease processing the
29 application until the conclusion of the trial.

30 (C) If no criminal record information has been recorded, the
31 Department of Justice shall provide the applicant and the State
32 Department of Social Services with a statement of that fact.

33 (D) If the State Department of Social Services finds after
34 licensure that the licensee, or any other person specified in
35 paragraph (2) of subdivision (b), has been convicted of a crime
36 other than a minor traffic violation, the license may be revoked,
37 unless the director grants an exemption pursuant to subdivision
38 (g).

39 (E) An applicant and any other person specified in subdivision
40 (b) shall submit a second set of fingerprints to the Department of



1 Justice for the purpose of searching the criminal records of the
2 Federal Bureau of Investigation, in addition to the criminal records
3 search required by this subdivision. If an applicant and all other
4 persons described in subdivision (b) meet all of the conditions for
5 licensure, except receipt of the Federal Bureau of Investigation's
6 criminal history information for the applicant or any of the persons
7 described in subdivision (b), the department may issue a license if
8 the applicant and each person described in subdivision (b) has
9 signed and submitted a statement that he or she has never been
10 convicted of a crime in the United States, other than a traffic
11 infraction, as defined in paragraph (1) of subdivision (a) of Section
12 42001 of the Vehicle Code. If, after licensure, the department
13 determines that the licensee or any other person specified in
14 subdivision (b) has a criminal record, the license may be revoked
15 pursuant to Section 1550. The department may also suspend the
16 license pending an administrative hearing pursuant to Section
17 1550.5.

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

20 (A) Adults responsible for administration or direct supervision
21 of staff.

22 (B) Any person, other than a client, residing in the facility.

23 (C) Any person who provides client assistance in dressing,
24 grooming, bathing, or personal hygiene. Any nurse assistant or
25 home health aide meeting the requirements of Section 1338.5 or
26 1736.6, respectively, who is not employed, retained, or contracted
27 by the licensee, and who has been certified or recertified on or after
28 July 1, 1998, shall be deemed to meet the criminal record clearance
29 requirements of this section. A certified nurse assistant and
30 certified home health aide who will be providing client assistance
31 and who falls under this exemption shall provide one copy of his
32 or her current certification, prior to providing care, to the
33 community care facility. The facility shall maintain the copy of the
34 certification on file as long as care is being provided by the
35 certified nurse assistant or certified home health aide at the facility.
36 Nothing in this paragraph restricts the right of the department to
37 exclude a certified nurse assistant or certified home health aide
38 from a licensed community care facility pursuant to Section 1558.

39 (D) Any staff person, volunteer, or employee who has contact
40 with the clients.



1 (E) If the applicant is a firm, partnership, association, or
2 corporation, the chief executive officer or other person serving in
3 like capacity.

4 (F) Additional officers of the governing body of the applicant,
5 or other persons with a financial interest in the applicant, as
6 determined necessary by the department by regulation. The
7 criteria used in the development of these regulations shall be based
8 on the person's capability to exercise substantial influence over the
9 operation of the facility.

10 (2) The following persons are exempt from the requirements
11 applicable under paragraph (1):

12 (A) A medical professional as defined in department
13 regulations who holds a valid license or certification from the
14 person's governing California medical care regulatory entity and
15 who is not employed, retained, or contracted by the licensee if all
16 of the following apply:

17 (i) The criminal record of the person has been cleared as a
18 condition of licensure or certification by the person's governing
19 California medical care regulatory entity.

20 (ii) The person is providing time-limited specialized clinical
21 care or services.

22 (iii) The person is providing care or services within the
23 person's scope of practice.

24 (iv) The person is not a community care facility licensee or an
25 employee of the facility.

26 (B) A third-party repair person or similar retained contractor if
27 all of the following apply:

28 (i) The person is hired for a defined, time-limited job.

29 (ii) The person is not left alone with clients.

30 (iii) When clients are present in the room in which the
31 repairperson or contractor is working, a staff person who has a
32 criminal record clearance or exemption is also present.

33 (C) Employees of a licensed home health agency and other
34 members of licensed hospice interdisciplinary teams who have a
35 contract with a client or resident of the facility and are in the
36 facility at the request of that client or resident's legal
37 decisionmaker. The exemption does not apply to a person who is
38 a community care facility licensee or an employee of the facility.

39 (D) Clergy and other spiritual caregivers who are performing
40 services in common areas of the community care facility or who



1 are advising an individual client at the request of, or with the
2 permission of, the client or legal decisionmaker, are exempt from
3 fingerprint and criminal background check requirements imposed
4 by community care licensing. This exemption does not apply to a
5 person who is a community care licensee or employee of the
6 facility.

7 (E) Members of fraternal, service, or similar organizations who
8 conduct group activities for clients if all of the following apply:

9 (i) Members are not left alone with clients.

10 (ii) Members do not transport clients off the facility premises.

11 (iii) The same organization does not conduct group activities
12 for clients more often than defined by the department's
13 regulations.

14 (3) In addition to the exemptions in paragraph (2), the
15 following persons in foster family homes, certified family homes,
16 and small family homes are exempt from the requirements
17 applicable under paragraph (1):

18 (A) Adult friends and family of the licensee who come into the
19 home to visit for a length of time no longer than defined by the
20 department in regulations, provided that the adult friends and
21 family of the licensee are not left alone with the foster children.

22 (B) Parents of a foster child's friends when the foster child is
23 visiting the friend's home and the friend, foster parent, or both are
24 also present.

25 (4) In addition to the exemptions specified in paragraph (2), the
26 following persons in adult day care and adult day support centers
27 are exempt from the requirements applicable under paragraph (1):

28 (A) Unless contraindicated by the client's individualized
29 program plan (IPP) or needs and service plan, a spouse, significant
30 other, relative, or close friend of a client, or an attendant or a
31 facilitator for a client with a developmental disability if the
32 attendant or facilitator is not employed, retained, or contracted by
33 the licensee. This exemption applies only if the person is visiting
34 the client or providing direct care and supervision to the client.

35 (B) A volunteer if all of the following applies:

36 (i) The volunteer is supervised by the licensee or a facility
37 employee with a criminal record clearance or exemption.

38 (ii) The volunteer is never left alone with clients.



1 (iii) The volunteer does not provide any client assistance with
2 dressing, grooming, bathing, or personal hygiene other than
3 washing of hands.

4 (5) (A) In addition to the exemptions specified in paragraph
5 (2), the following persons in adult residential and social
6 rehabilitation facilities, unless contraindicated by the client's
7 individualized program plan (IPP) or needs and services plan, are
8 exempt from the requirements applicable under paragraph (1): a
9 spouse, significant other, relative, or close friend of a client, or an
10 attendant or a facilitator for a client with a developmental
11 disability if the attendant or facilitator is not employed, retained,
12 or contracted by the licensee. This exemption applies only if the
13 person is visiting the client or providing direct care and
14 supervision to that client.

15 (B) Nothing in this subdivision shall prevent a licensee from
16 requiring a criminal record clearance of any individual exempt
17 from the requirements of this section, provided that the individual
18 has client contact.

19 (6) Any person similar to those described in this subdivision,
20 as defined by the department in regulations.

21 (c) (1) Subsequent to initial licensure, any person specified in
22 subdivision (b) and not exempted from fingerprinting shall, as a
23 condition to employment, residence, or presence in a community
24 care facility, be fingerprinted and sign a declaration under penalty
25 of perjury regarding any prior criminal convictions. The licensee
26 shall submit these fingerprints to the Department of Justice, along
27 with a second set of fingerprints for the purpose of searching the
28 records of the Federal Bureau of Investigation, or to comply with
29 paragraph (1) of subdivision (h), prior to the person's
30 employment, residence, or initial presence in the community care
31 facility. These fingerprints shall be on a card provided by the State
32 Department of Social Services or sent by electronic transmission
33 in a manner approved by the State Department of Social Services
34 and the Department of Justice for the purpose of obtaining a
35 permanent set of fingerprints, and shall be submitted to the
36 Department of Justice by the licensee. A licensee's failure to
37 submit fingerprints to the Department of Justice or to comply with
38 paragraph (1) of subdivision (h), as required in this section, shall
39 result in the citation of a deficiency and the immediate assessment
40 of civil penalties in the amount of one hundred dollars (\$100) per



1 violation, per day for a maximum of five days, unless the violation
2 is a second or subsequent violation within a 12-month period in
3 which case the civil penalties shall be in the amount of one hundred
4 dollars (\$100) per violation for a maximum of 30 days, and shall
5 be grounds for disciplining the licensee pursuant to Section 1550.
6 The department may assess civil penalties for continued violations
7 as permitted by Section 1548. The fingerprints shall then be
8 submitted to the State Department of Social Services for
9 processing. Upon request of the licensee, who shall enclose a
10 self-addressed stamped postcard for this purpose, the Department
11 of Justice shall verify receipt of the fingerprints.

12 (2) Within 14 calendar days of the receipt of the fingerprints,
13 the Department of Justice shall notify the State Department of
14 Social Services of the criminal record information, as provided for
15 in subdivision (a). If no criminal record information has been
16 recorded, the Department of Justice shall provide the licensee and
17 the State Department of Social Services with a statement of that
18 fact within 14 calendar days of receipt of the fingerprints.
19 Documentation of the individual's clearance or exemption shall be
20 maintained by the licensee and be available for inspection. If new
21 fingerprints are required for processing, the Department of Justice
22 shall, within 14 calendar days from the date of receipt of the
23 fingerprints, notify the licensee that the fingerprints were illegible.
24 When live-scan technology is operational, as defined in Section
25 1522.04, the Department of Justice shall notify the State
26 Department of Social Services, as required by that section, and
27 shall also notify the licensee by mail, within 14 days of electronic
28 transmission of the fingerprints to the Department of Justice, if the
29 person has no criminal history recorded. A violation of the
30 regulations adopted pursuant to Section 1522.04 shall result in the
31 citation of a deficiency and an immediate assessment of civil
32 penalties in the amount of one hundred dollars (\$100) per
33 violation, per day for a maximum of five days, unless the violation
34 is a second or subsequent violation within a 12-month period in
35 which case the civil penalties shall be in the amount of one hundred
36 dollars (\$100) per violation for a maximum of 30 days, and shall
37 be grounds for disciplining the licensee pursuant to Section 1550.
38 The department may assess civil penalties for continued violations
39 as permitted by Section 1548.



1 (3) Except for persons specified in paragraph (2) of subdivision
2 (b), the licensee shall endeavor to ascertain the previous
3 employment history of persons required to be fingerprinted under
4 this subdivision. If it is determined by the State Department of
5 Social Services, on the basis of the fingerprints submitted to the
6 Department of Justice, that the person has been convicted of, or is
7 awaiting trial for, a sex offense against a minor, or has been
8 convicted for an offense specified in Section 243.4, 273a, 273d,
9 273g, or 368 of the Penal Code, or a felony, the State Department
10 of Social Services shall notify the licensee to act immediately to
11 terminate the person's employment, remove the person from the
12 community care facility, or bar the person from entering the
13 community care facility. The State Department of Social Services
14 may subsequently grant an exemption pursuant to subdivision (g).
15 If the conviction or arrest was for another crime, except a minor
16 traffic violation, the licensee shall, upon notification by the State
17 Department of Social Services, act immediately to either (1)
18 terminate the person's employment, remove the person from the
19 community care facility, or bar the person from entering the
20 community care facility; or (2) seek an exemption pursuant to
21 subdivision (g). The State Department of Social Services shall
22 determine if the person shall be allowed to remain in the facility
23 until a decision on the exemption is rendered. A licensee's failure
24 to comply with the department's prohibition of employment,
25 contact with clients, or presence in the facility as required by this
26 paragraph shall be grounds for disciplining the licensee pursuant
27 to Section 1550.

28 (4) The department may issue an exemption on its own motion
29 pursuant to subdivision (g) if the person's criminal history
30 indicates that the person is of good character based on the age,
31 seriousness, and frequency of the conviction or convictions. The
32 department, in consultation with interested parties, shall develop
33 regulations to establish the criteria to grant an exemption pursuant
34 to this paragraph.

35 (5) Concurrently with notifying the licensee pursuant to
36 paragraph (3), the department shall notify the affected individual
37 of his or her right to seek an exemption pursuant to subdivision (g).
38 The individual may seek an exemption only if the licensee
39 terminates the person's employment or removes the person from



1 the facility after receiving notice from the department pursuant to
2 paragraph (3).

3 (d) (1) Before issuing a license, special permit, or certificate
4 of approval to any person or persons to operate or manage a foster
5 family home or certified family home as described in Section
6 1506, the State Department of Social Services or other approving
7 authority shall secure from an appropriate law enforcement
8 agency a criminal record to determine whether the applicant or any
9 person specified in subdivision (b) has ever been convicted of a
10 crime other than a minor traffic violation or arrested for any crime
11 specified in Section 290 of the Penal Code, for violating Section
12 245 or 273.5, subdivision (b) of Section 273a or, prior to January
13 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
14 any crime for which the department cannot grant an exemption if
15 the person was convicted and the person has not been exonerated.

16 (2) The criminal history information shall include the full
17 criminal record, if any, of those persons.

18 (3) Neither the Department of Justice nor the State Department
19 of Social Services may charge a fee for the fingerprinting of an
20 applicant for a license, special permit, or certificate of approval
21 described in this subdivision. The record, if any, shall be taken into
22 consideration when evaluating a prospective applicant.

23 (4) The following shall apply to the criminal record
24 information:

25 (A) If the applicant or other persons specified in subdivision (b)
26 have convictions that would make the applicant's home unfit as a
27 foster family home or a certified family home, the license, special
28 permit, or certificate of approval shall be denied.

29 (B) If the State Department of Social Services finds that the
30 applicant, or any person specified in subdivision (b) is awaiting
31 trial for a crime other than a minor traffic violation, the State
32 Department of Social Services or other approving authority may
33 cease processing the application until the conclusion of the trial.

34 (C) For the purposes of this subdivision, a criminal record
35 clearance provided under Section 8712 of the Family Code may
36 be used by the department or other approving agency.

37 (D) An applicant for a foster family home license or for
38 certification as a family home, and any other person specified in
39 subdivision (b), shall submit a set of fingerprints to the Department
40 of Justice for the purpose of searching the criminal records of the



1 Federal Bureau of Investigation, in addition to the criminal records
2 search required by subdivision (a). If an applicant meets all other
3 conditions for licensure, except receipt of the Federal Bureau of
4 Investigation's criminal history information for the applicant and
5 all persons described in subdivision (b), the department may issue
6 a license, or the foster family agency may issue a certificate of
7 approval, if the applicant, and each person described in
8 subdivision (b), has signed and submitted a statement that he or she
9 has never been convicted of a crime in the United States, other than
10 a traffic infraction, as defined in paragraph (1) of subdivision (a)
11 of Section 42001 of the Vehicle Code. If, after licensure or
12 certification, the department determines that the licensee, certified
13 foster parent, or any person specified in subdivision (b) has a
14 criminal record, the license may be revoked pursuant to Section
15 1550 and the certificate of approval revoked pursuant to
16 subdivision (b) of Section 1534. The department may also suspend
17 the license pending an administrative hearing pursuant to Section
18 1550.5.

19 (5) Any person specified in this subdivision shall, as a part of
20 the application, be fingerprinted and sign a declaration under
21 penalty of perjury regarding any prior criminal convictions or
22 arrests for any crime against a child, spousal or cohabitant abuse
23 or, any crime for which the department cannot grant an exemption
24 if the person was convicted and shall submit these fingerprints to
25 the licensing agency or other approving authority.

26 (6) (A) The foster family agency shall obtain fingerprints from
27 certified home applicants and from persons specified in
28 subdivision (b) and shall submit them directly to the Department
29 of Justice or send them by electronic transmission in a manner
30 approved by the State Department of Social Services. A foster
31 family home licensee or foster family agency shall submit these
32 fingerprints to the Department of Justice, along with a second set
33 of fingerprints for the purpose of searching the records of the
34 Federal Bureau of Investigation or to comply with paragraph (1)
35 of subdivision (b) prior to the person's employment, residence, or
36 initial presence. A foster family agency's failure to submit
37 fingerprints to the Department of Justice, or comply with
38 paragraph (1) of subdivision (h), as required in this section, shall
39 result in a citation of a deficiency, and the immediate civil penalties
40 of one hundred dollars (\$100) per violation, per day for a



1 maximum of five days, unless the violation is a second or
2 subsequent violation within a 12-month period in which case the
3 civil penalties shall be in the amount of one hundred dollars (\$100)
4 per violation for a maximum of 30 days, and shall be grounds for
5 disciplining the licensee pursuant to Section 1550. A violation of
6 the regulation adopted pursuant to Section 1522.04 shall result in
7 the citation of a deficiency and an immediate assessment of civil
8 penalties in the amount of one hundred dollars (\$100) per
9 violation, per day for a maximum of five days, unless the violation
10 is a second or subsequent violation within a 12-month period in
11 which case the civil penalties shall be in the amount of one hundred
12 dollars (\$100) per violation for a maximum of 30 days, and shall
13 be grounds for disciplining the foster family agency pursuant to
14 Section 1550. A licensee's failure to submit fingerprints to the
15 Department of Justice, or comply with paragraph (1) of
16 subdivision (h), as required in this section, may result in the
17 citation of a deficiency and immediate civil penalties of one
18 hundred dollars (\$100) per violation. A licensee's violation of
19 regulations adopted pursuant to Section 1522.04 may result in the
20 citation of a deficiency and an immediate assessment of civil
21 penalties in the amount of one hundred dollars (\$100) per
22 violation. The State Department of Social Services may assess
23 penalties for continued violations, as permitted by Section 1548.
24 The fingerprints shall then be submitted to the State Department
25 of Social Services for processing.

26 (B) Upon request of the licensee, who shall enclose a
27 self-addressed envelope for this purpose, the Department of
28 Justice shall verify receipt of the fingerprints. Within five working
29 days of the receipt of the criminal record or information regarding
30 criminal convictions from the Department of Justice, the
31 department shall notify the applicant of any criminal arrests or
32 convictions. If no arrests or convictions are recorded, the
33 Department of Justice shall provide the foster family home
34 licensee or the foster family agency with a statement of that fact
35 concurrent with providing the information to the State Department
36 of Social Services.

37 (7) If the State Department of Social Services finds that the
38 applicant, or any other person specified in subdivision (b), has
39 been convicted of a crime other than a minor traffic violation, the



1 application shall be denied, unless the director grants an
2 exemption pursuant to subdivision (g).

3 (8) If the State Department of Social Services finds after
4 licensure or the granting of the certificate of approval that the
5 licensee, certified foster parent, or any other person specified in
6 paragraph (2) of subdivision (b), has been convicted of a crime
7 other than a minor traffic violation, the license or certificate of
8 approval may be revoked by the department or the foster family
9 agency, whichever is applicable, unless the director grants an
10 exemption pursuant to subdivision (g). A licensee's failure to
11 comply with the department's prohibition of employment, contact
12 with clients, or presence in the facility as required by paragraph (3)
13 of subdivision (c) shall be grounds for disciplining the licensee
14 pursuant to Section 1550.

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

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



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

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

15 (g) (1) After review of the record, the director may grant an
16 exemption from disqualification for a license or special permit as
17 specified in paragraphs (1) and (4) of subdivision (a), or for a
18 license, special permit, or certificate of approval as specified in
19 paragraphs (4) and (5) of subdivision (d), or for employment,
20 residence, or presence in a community care facility as specified in
21 paragraphs (3), (4), and (5) of subdivision (c), if the director has
22 substantial and convincing evidence to support a reasonable belief
23 that the applicant and the person convicted of the crime, if other
24 than the applicant, are of such good character as to justify issuance
25 of the license or special permit or granting an exemption for
26 purposes of subdivision (c). Except as otherwise provided in this
27 subdivision, an exemption may not be granted pursuant to this
28 subdivision if the conviction was for any of the following offenses:

29 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
30 subdivision (a) of Section 273a or, prior to January 1, 1994,
31 paragraph (1) of Section 273a, Section 273d, 288, or 289,
32 subdivision (a) of Section 290, or Section 368 of the Penal Code,
33 or was a conviction of another crime against an individual
34 specified in subdivision (c) of Section 667.5 of the Penal Code.

35 (ii) Notwithstanding clause (i), the director may grant an
36 exemption regarding the conviction for an offense described in
37 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
38 of the Penal Code, if the employee or prospective employee has
39 been rehabilitated as provided in Section 4852.03 of the Penal
40 Code, has maintained the conduct required in Section 4852.05 of



1 the Penal Code for at least 10 years, and has the recommendation
2 of the district attorney representing the employee's county of
3 residence, or if the employee or prospective employee has
4 received a certificate of rehabilitation pursuant to Chapter 3.5
5 (commencing with Section 4852.01) of Title 6 of Part 3 of the
6 Penal Code.

7 (B) A felony offense specified in Section 729 of the Business
8 and Professions Code or Section 206 or 215, subdivision (a) of
9 Section 347, subdivision (b) of Section 417, or subdivision (a) of
10 Section 451 of the Penal Code.

11 (2) The department may not prohibit a person from being
12 employed or having contact with clients in a facility on the basis
13 of a denied criminal record exemption request or arrest
14 information unless the department complies with the requirements
15 of Section 1558.

16 (h) (1) For purposes of compliance with this section, the
17 department may permit an individual to transfer a current criminal
18 record clearance, as defined in subdivision (a), from one facility
19 to another, as long as the criminal record clearance has been
20 processed through a state licensing district office, and is being
21 transferred to another facility licensed by a state licensing district
22 office. The request shall be in writing to the State Department of
23 Social Services, and shall include a copy of the person's driver's
24 license or valid identification card issued by the Department of
25 Motor Vehicles, or a valid photo identification issued by another
26 state or the United States government if the person is not a
27 California resident. Upon request of the licensee, who shall
28 enclose a self-addressed envelope for this purpose, the State
29 Department of Social Services shall verify whether the individual
30 has a clearance that can be transferred.

31 (2) The State Department of Social Services shall hold criminal
32 record clearances in its active files for a minimum of two years
33 after an employee is no longer employed at a licensed facility in
34 order for the criminal record clearance to be transferred.

35 (3) *The following shall apply to a criminal record clearance or
36 exemption from the department or a county office with department
37 delegated licensing authority:*

38 (A) *A county office with department delegated licensing
39 authority may accept a clearance or exemption from the
40 department.*



1 (B) *The department may accept a clearance or exemption from*
2 *any county office with department delegated licensing authority.*

3 (C) *A county office with department delegated licensing*
4 *authority may accept a clearance or exemption from any other*
5 *county office with department delegated licensing authority.*

6 (4) *With respect to notifications issued by the Department of*
7 *Justice pursuant to Section 11105.2 of the Penal Code concerning*
8 *an individual whose criminal record clearance was originally*
9 *processed by the department or a county office with department*
10 *delegated licensing authority, all of the following shall apply:*

11 (A) *The Department of Justice shall process a request from the*
12 *department or a county office with department delegated licensing*
13 *authority to receive the notice if all of the following conditions are*
14 *met:*

15 (i) *The request shall be submitted to the Department of Justice*
16 *by the agency to be substituted or added to the notification process.*

17 (ii) *The request shall be for the same applicant type as the type*
18 *for which the original clearance was obtained.*

19 (iii) *The Department of Justice shall provide a notification that*
20 *includes prescribed data elements and format protocols pursuant*
21 *to a written agreement between the department and the*
22 *Department of Justice.*

23 (B) (i) *On or before January 7, 2005, the department shall*
24 *notify the Department of Justice of all county offices that have*
25 *department delegated licensing authority.*

26 (ii) *The department shall notify the Department of Justice*
27 *within 15 calendar days of the date on which a new county office*
28 *receives department delegated licensing authority or a county's*
29 *delegated licensing authority is rescinded.*

30 (C) *The Department of Justice shall charge the department or*
31 *a county office with department delegated licensing authority a fee*
32 *for each time a request to modify the recipient agency is received*
33 *for purposes of this paragraph. This fee shall not exceed the cost*
34 *of providing the service.*

35 (i) *The full criminal record obtained for purposes of this section*
36 *may be used by the department or by a licensed adoption agency*
37 *as a clearance required for adoption purposes.*

38 (j) *If a licensee or facility is required by law to deny*
39 *employment or to terminate employment of any employee based*
40 *on written notification from the state department that the employee*



1 has a prior criminal conviction or is determined unsuitable for
2 employment under Section 1558, the licensee or facility shall not
3 incur civil liability or unemployment insurance liability as a result
4 of that denial or termination.

5 (k) (1) The Department of Justice shall coordinate with the
6 State Department of Social Services to establish and implement an
7 automated live-scan processing system for fingerprints in the
8 district offices of the Community Care Licensing Division of the
9 State Department of Social Services by July 1, 1999. These
10 live-scan processing units shall be connected to the main system
11 at the Department of Justice by July 1, 1999, and shall become part
12 of that department's pilot project in accordance with its long-range
13 plan. The State Department of Social Services may charge a fee for
14 the costs of processing a set of live-scan fingerprints.

15 (2) The Department of Justice shall provide a report to the
16 Senate and Assembly fiscal committees, the Assembly Human
17 Services Committee, and to the Senate Health and Human
18 Services Committee by April 15, 1999, regarding the completion
19 of backlogged criminal record clearance requests for all facilities
20 licensed by the State Department of Social Services and the
21 progress on implementing the automated live-scan processing
22 system in the two district offices pursuant to paragraph (1).

23 (l) Amendments to this section made in the 1999 portion of the
24 1999–2000 Regular Session shall be implemented commencing
25 60 days after the effective date of the act amending this section in
26 the 1999 portion of the 1999–2000 Regular Session, except that
27 those provisions for the submission of fingerprints for searching
28 the records of the Federal Bureau of Investigation shall be
29 implemented 90 days after the effective date of that act.

30 SEC. 2. Section 1568.09 of the Health and Safety Code is
31 amended to read:

32 1568.09. It is the intent of the Legislature in enacting this
33 section to require the fingerprints of those individuals whose
34 contact with residents of residential care facilities for persons with
35 a chronic, life-threatening illness may pose a risk to the residents'
36 health and safety.

37 Therefore, the Legislature supports the use of the fingerprint
38 live-scan technology, as identified in the long-range plan of the
39 Department of Justice for fully automating the processing of
40 fingerprints and other data by the year 1999, otherwise known as



1 the California Crime Information Intelligence System (CAL-CII),
2 to be used for applicant fingerprints. It is the intent of the
3 Legislature, in enacting this section, to require the fingerprints of
4 those individuals whose contact with community care clients may
5 pose a risk to the clients' health and safety.

6 (a) (1) Before issuing a license to any person or persons to
7 operate or manage a residential care facility, the department shall
8 secure from an appropriate law enforcement agency a criminal
9 record to determine whether the applicant or any other person
10 specified in subdivision (b) has ever been convicted of a crime
11 other than a minor traffic violation or arrested for any crime
12 specified in Section 290 of the Penal Code, for violating Section
13 245 or 273.5, subdivision (b) of Section 273a or, prior to January
14 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
15 any crime for which the department cannot grant an exemption if
16 the person was convicted and the person has not been exonerated.

17 (2) The criminal history information shall include the full
18 criminal record if any, of those persons, and subsequent arrest
19 information pursuant to Section 11105.2 of the Penal Code.

20 (3) The following shall apply to the criminal record
21 information:

22 (A) If the State Department of Social Services finds that the
23 applicant or any other person specified in subdivision (b) has been
24 convicted of a crime, other than a minor traffic violation, the
25 application shall be denied, unless the director grants an
26 exemption pursuant to subdivision (f).

27 (B) If the State Department of Social Services finds that the
28 applicant, or any other person specified in subdivision (b) is
29 awaiting trial for a crime other than a minor traffic violation, the
30 State Department of Social Services may cease processing the
31 application until the conclusion of the trial.

32 (C) If no criminal record information has been recorded, the
33 Department of Justice shall provide the applicant and the State
34 Department of Social Services with a statement of that fact.

35 (D) If the State Department of Social Services finds after
36 licensure that the licensee, or any other person specified in
37 paragraph (2) of subdivision (b), has been convicted of a crime
38 other than a minor traffic violation, the license may be revoked,
39 unless the director grants an exemption pursuant to subdivision (f).



1 (E) An applicant and any other person specified in subdivision
2 (b) shall submit to the Department of Justice a second set of
3 fingerprints for the purpose of searching the records of the Federal
4 Bureau of Investigation, in addition to the search required by this
5 subdivision. If an applicant meets all other conditions for
6 licensure, except receipt of the Federal Bureau of Investigation's
7 criminal history information for the applicant and persons listed in
8 subdivision (b), the department may issue a license if the applicant
9 and each person described by subdivision (b) has signed and
10 submitted a statement that he or she has never been convicted of
11 a crime in the United States, other than a traffic infraction as
12 defined in paragraph (1) of subdivision (a) of Section 42001 of the
13 Vehicle Code. If, after licensure, the department determines that
14 the licensee or person specified in subdivision (b) has a criminal
15 record, the license may be revoked pursuant to subdivision (a) of
16 Section 1568.082. The department may also suspend the license
17 pending an administrative hearing pursuant to subdivision (b) of
18 Section 1568.082.

19 (b) In addition to the applicant, the provisions of this section
20 shall be applicable to criminal convictions of the following
21 persons:

22 (1) Adults responsible for administration or direct supervision
23 of staff of the facility.

24 (2) Any person, other than a resident, residing in the facility.

25 (3) Any person who provides resident assistance in dressing,
26 grooming, bathing, or personal hygiene. Any nurse assistant or
27 home health aide meeting the requirements of Section 1338.5 or
28 1736.6, respectively, who is not employed, retained, or contracted
29 by the licensee, and who has been certified or recertified on or after
30 July 1, 1998, shall be deemed to meet the criminal record clearance
31 requirements of this section. A certified nurse assistant and
32 certified home health aide who will be providing client assistance
33 and who falls under this exemption shall provide one copy of his
34 or her current certification, prior to providing care, to the
35 residential care facility for persons with chronic, life-threatening
36 illness. The facility shall maintain the copy of the certification on
37 file as long as care is being provided by the certified nurse assistant
38 or certified home health aide at the facility. Nothing in this
39 paragraph restricts the right of the department to exclude a
40 certified nurse assistant or certified home health aide from a



1 licensed residential care facility for persons with chronic,
2 life-threatening illness pursuant to Section 1568.092.

3 (4) (A) Any staff person, volunteer, or employee who has
4 contact with the residents.

5 (B) A volunteer shall be exempt from the requirements of this
6 subdivision if he or she is a relative, significant other, or close
7 friend of a client receiving care in the facility and the volunteer
8 does not provide direct care and supervision of residents. A
9 volunteer who provides direct care and supervision shall be
10 exempt if the volunteer is a resident's spouse, significant other,
11 close friend, or family member and provides direct care and
12 supervision to that resident only at the request of the resident. The
13 department may define in regulations persons similar to those
14 described in this subparagraph who may be exempt from the
15 requirements of this subdivision.

16 (5) If the applicant is a firm, partnership, association, or
17 corporation, the chief executive officer or other person serving in
18 that capacity.

19 (6) Additional officers of the governing body of the applicant,
20 or other persons with a financial interest in the applicant, as
21 determined necessary by the department by regulation. The
22 criteria used in the development of these regulations shall be based
23 on the person's capability to exercise substantial influence over the
24 operation of the facility.

25 (c) (1) (A) Subsequent to initial licensure, any person
26 specified in subdivision (b) and not exempted from fingerprinting
27 shall, as a condition to employment, residence, or presence in a
28 residential care facility, be fingerprinted and sign a declaration
29 under penalty of perjury regarding any prior criminal convictions.
30 The licensee shall submit these fingerprints to the Department of
31 Justice, along with a second set of fingerprints, for the purpose of
32 searching the records of the Federal Bureau of Investigation, or to
33 comply with paragraph (1) of subdivision (g), prior to the person's
34 employment, residence, or initial presence in the residential care
35 facility.

36 (B) These fingerprints shall be on a card provided by the State
37 Department of Social Services for the purpose of obtaining a
38 permanent set of fingerprints and submitted to the Department of
39 Justice by the licensee or sent by electronic transmission in a
40 manner approved by the State Department of Social Services. A



1 licensee's failure to submit fingerprints to the Department of
2 Justice, or to comply with paragraph (1) of subdivision (g), as
3 required in this section, shall result in the citation of a deficiency
4 and an immediate assessment of civil penalties in the amount of
5 one hundred dollars (\$100) per violation, per day for a maximum
6 of five days, unless the violation is a second or subsequent
7 violation within a 12-month period in which case the civil
8 penalties shall be in the amount of one hundred dollars (\$100) per
9 violation for a maximum of 30 days, and shall be grounds for
10 disciplining the licensee pursuant to Section ~~1550~~ 1568.082. The
11 State Department of Social Services may assess civil penalties for
12 continued violations as allowed in Section 1568.0822. The
13 fingerprints shall then be submitted to the State Department of
14 Social Services for processing. The licensee shall maintain and
15 make available for inspection documentation of the individual's
16 clearance or exemption.

17 (2) A violation of the regulations adopted pursuant to Section
18 1522.04 shall result in the citation of a deficiency and an
19 immediate assessment of civil penalties in the amount of one
20 hundred dollars (\$100) per violation per day for a maximum of
21 five days, unless the violation is a second or subsequent violation
22 within a 12-month period in which case the civil penalties shall be
23 in the amount of one hundred dollars (\$100) per violation for a
24 maximum of 30 days, and shall be grounds for disciplining the
25 licensee pursuant to Section ~~1550~~ 1568.082. The department may
26 assess civil penalties for continued violations as permitted by
27 Section 1568.0822.

28 (3) Within 14 calendar days of the receipt of the fingerprints,
29 the Department of Justice shall notify the State Department of
30 Social Services of the criminal record information, as provided for
31 in this subdivision. If no criminal record information has been
32 recorded, the Department of Justice shall provide the licensee and
33 the State Department of Social Services with a statement of that
34 fact within 14 calendar days of receipt of the fingerprints. If new
35 fingerprints are required for processing, the Department of Justice
36 shall, within 14 calendar days from the date of receipt of the
37 fingerprints, notify the licensee that the fingerprints were illegible.
38 When live-scan technology is operational, as defined in Section
39 1522.04, the Department of Justice shall notify the department, as
40 required by that section, and shall notify the licensee by mail



1 within 14 days of electronic transmission of the fingerprints to the
2 Department of Justice, if the person has no criminal history record.

3 (4) Except for persons specified in paragraph (2) of subdivision
4 (b), the licensee shall endeavor to ascertain the previous
5 employment history of persons required to be fingerprinted under
6 this subdivision. If it is determined by the State Department of
7 Social Services, on the basis of the fingerprints submitted to the
8 Department of Justice, that the person has been convicted of a sex
9 offense against a minor, an offense specified in Section 243.4,
10 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the
11 department shall notify the licensee to act immediately to
12 terminate the person's employment, remove the person from the
13 residential care facility, or bar the person from entering the
14 residential care facility. The department may subsequently grant
15 an exemption pursuant to subdivision (f). If the conviction was for
16 another crime, except a minor traffic violation, the licensee shall,
17 upon notification by the department, act immediately to either (1)
18 terminate the person's employment, remove the person from the
19 residential care facility, or bar the person from entering the
20 residential care facility; or (2) seek an exemption pursuant to
21 subdivision (f). The department shall determine if the person shall
22 be allowed to remain in the facility until a decision on the
23 exemption is rendered. A licensee's failure to comply with the
24 department's prohibition of employment, contact with clients, or
25 presence in the facility as required by this paragraph shall result in
26 a citation of deficiency and an immediate assessment of civil
27 penalties by the department against the licensee, in the amount of
28 one hundred dollars (\$100) per violation, per day for a maximum
29 of five days, unless the violation is a second or subsequent
30 violation within a 12-month period in which case the civil
31 penalties shall be in the amount of one hundred dollars (\$100) per
32 violation for a maximum of 30 days, and shall be grounds for
33 disciplining the licensee pursuant to Section 1568.082.

34 (5) The department may issue an exemption on its own motion
35 pursuant to subdivision (f) if the person's criminal history
36 indicates that the person is of good character based on the age,
37 seriousness, and frequency of the conviction or convictions. The
38 department, in consultation with interested parties, shall develop
39 regulations to establish the criteria to grant an exemption pursuant
40 to this paragraph.



1 (6) Concurrently with notifying the licensee pursuant to
2 paragraph (4), the department shall notify the affected individual
3 of his or her right to seek an exemption pursuant to subdivision (f).
4 The individual may seek an exemption only if the licensee
5 terminates the person's employment or removes the person from
6 the facility after receiving notice from the department pursuant to
7 paragraph (4).

8 (d) (1) For purposes of this section or any other provision of
9 this chapter, a conviction means a plea or verdict of guilty or a
10 conviction following a plea of nolo contendere. Any action that the
11 department is permitted to take following the establishment of a
12 conviction may be taken when the time for appeal has elapsed,
13 when the judgment of conviction has been affirmed on appeal, or
14 when an order granting probation is made suspending the
15 imposition of the sentence, notwithstanding a subsequent order
16 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
17 permitting that person to withdraw his or her plea of guilty and to
18 enter a plea of not guilty, setting aside the verdict of guilty, or
19 dismissing the accusation, information, or indictment. For
20 purposes of this chapter, the record of a conviction, or a copy
21 thereof certified by the clerk of the court or by a judge of the court
22 in which the conviction occurred, shall be conclusive evidence of
23 the conviction. For purposes of this section or any other provision
24 of this chapter, the arrest disposition report certified by the
25 Department of Justice, or documents admissible in a criminal
26 action pursuant to Section 969b of the Penal Code, shall be prima
27 facie evidence of the conviction, notwithstanding any other
28 provision of law prohibiting the admission of these documents in
29 a civil or administrative action.

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

34 (e) The State Department of Social Services may not use a
35 record of arrest to deny, revoke, or terminate any application,
36 license, employment, or residence unless the department
37 investigates the incident and secures evidence, whether or not
38 related to the incident of arrest, that is admissible in an
39 administrative hearing to establish conduct by the person that may
40 pose a risk to the health and safety of any person who is or may



1 become a client. The State Department of Social Services is
2 authorized to obtain any arrest or conviction records or reports
3 from any law enforcement agency as necessary to the performance
4 of its duties to inspect, license, and investigate community care
5 facilities and individuals associated with a community care
6 facility.

7 (f) (1) After review of the record, the director may grant an
8 exemption from disqualification for a license as specified in
9 paragraphs (1) and (4) of subdivision (a), or for employment,
10 residence, or presence in a residential care facility as specified in
11 paragraphs (4), (5), and (6) of subdivision (c) if the director has
12 substantial and convincing evidence to support a reasonable belief
13 that the applicant and the person convicted of the crime, if other
14 than the applicant, are of such good character as to justify issuance
15 of the license or special permit or granting an exemption for
16 purposes of subdivision (c). However, an exemption may not be
17 granted pursuant to this subdivision if the conviction was for any
18 of the following offenses:

19 (A) An offense specified in Section 220, 243.4, or 264.1,
20 subdivision (a) of Section 273a or, prior to January 1, 1994,
21 paragraph (1) of Section 273a, Section 273d, 288, or 289,
22 subdivision (a) of Section 290, or Section 368 of the Penal Code,
23 or was a conviction of another crime against an individual
24 specified in subdivision (c) of Section 667.5 of the Penal Code.

25 (B) A felony offense specified in Section 729 of the Business
26 and Professional Code or Section 206 or 215, subdivision (a) of
27 Section 347, subdivision (b) of Section 417, or subdivision (a) of
28 Section 451 of the Penal Code.

29 (2) The department may not prohibit a person from being
30 employed or having contact with clients in a facility on the basis
31 of a denied criminal record exemption request or arrest
32 information unless the department complies with the requirements
33 of Section 1568.092.

34 (g) (1) For purposes of compliance with this section, the
35 department may permit an individual to transfer a current criminal
36 record clearance, as defined in subdivision (a), from one facility
37 to another, as long as the criminal record clearance has been
38 processed through a state licensing district office, and is being
39 transferred to another facility licensed by a state licensing district
40 office. The request shall be in writing to the department, and shall



1 include a copy of the person's driver's license or valid
2 identification card issued by the Department of Motor Vehicles, or
3 a valid photo identification issued by another state or the United
4 States government if the person is not a California resident. Upon
5 request of the licensee, who shall enclose a self-addressed stamped
6 envelope for this purpose, the department shall verify whether the
7 individual has a clearance that can be transferred.

8 (2) The State Department of Social Services shall hold criminal
9 record clearances in its active files for a minimum of two years
10 after an employee is no longer employed at a licensed facility in
11 order for the criminal record clearance to be transferred.

12 (h) If a licensee or facility is required by law to deny
13 employment or to terminate employment of any employee based
14 on written notification from the state department that the employee
15 has a prior criminal conviction or is determined unsuitable for
16 employment under Section 1568.092, the licensee or facility shall
17 not incur civil liability or unemployment insurance liability as a
18 result of that denial or termination.

19 (i) (1) The Department of Justice shall charge a fee sufficient
20 to cover its cost in providing services to comply with the 14-day
21 requirement contained in subdivision (c) for provision to the
22 department of criminal record information.

23 (2) Paragraph (1) shall cease to be implemented when the
24 department adopts emergency regulations pursuant to Section
25 1522.04, and shall become inoperative when permanent
26 regulations are adopted under that section.

27 (j) Amendments to the provisions of this section made in the
28 1998 calendar year shall be implemented commencing 60 days
29 after the effective date of the act amending this section in the 1998
30 calendar year, except those provisions for the submission of
31 fingerprints for searching the records of the Federal Bureau of
32 Investigation, which shall be implemented commencing January
33 1, 1999.

34 SEC. 3. Section 1569.17 of the Health and Safety Code is
35 amended to read:

36 1569.17. The Legislature recognizes the need to generate
37 timely and accurate positive fingerprint identification of
38 applicants as a condition of issuing licenses, permits, or
39 certificates of approval for persons to operate or provide direct
40 care services in a residential care facility for the elderly. The



1 Legislature supports the use of the fingerprint live-scan
2 technology, as identified in the long-range plan of the Department
3 of Justice for fully automating the processing of fingerprints and
4 other data by the year 1999. It is the intent of the Legislature in
5 enacting this section to require the fingerprints of those individuals
6 whose contact with clients of residential care facilities for the
7 elderly may pose a risk to the clients' health and safety.

8 (a) (1) Before issuing a license to any person or persons to
9 operate or manage a residential care facility for the elderly, the
10 department shall secure from an appropriate law enforcement
11 agency a criminal record to determine whether the applicant or any
12 other person specified in subdivision (b) has ever been convicted
13 of a crime other than a minor traffic violation or arrested for any
14 crime specified in Section 290 of the Penal Code, for violating
15 Section 245 or 273.5, subdivision (b) of Section 273a or, prior to
16 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
17 or for any crime for which the department cannot grant an
18 exemption if the person was convicted and the person has not been
19 exonerated.

20 (2) The criminal history information shall include the full
21 criminal record, if any, of those persons, and subsequent arrest
22 information pursuant to Section 11105.2 of the Penal Code.

23 (3) The following shall apply to the criminal record
24 information:

25 (A) If the State Department of Social Services finds that the
26 applicant or any other person specified in subdivision (b) has been
27 convicted of a crime, other than a minor traffic violation, the
28 application shall be denied, unless the director grants an
29 exemption pursuant to subdivision (f).

30 (B) If the State Department of Social Services finds that the
31 applicant, or any other person specified in subdivision (b) is
32 awaiting trial for a crime other than a minor traffic violation, the
33 State Department of Social Services may cease processing the
34 application until the conclusion of the trial.

35 (C) If no criminal record information has been recorded, the
36 Department of Justice shall provide the applicant and the State
37 Department of Social Services with a statement of that fact.

38 (D) If the State Department of Social Services finds after
39 licensure that the licensee, or any other person specified in
40 paragraph (2) of subdivision (b), has been convicted of a crime



1 other than a minor traffic violation, the license may be revoked,
2 unless the director grants an exemption pursuant to subdivision (f).

3 (E) An applicant and any other person specified in subdivision
4 (b) shall submit a second set of fingerprints to the Department of
5 Justice, for the purpose of searching the records of the Federal
6 Bureau of Investigation, in addition to the search required by
7 subdivision (a). If an applicant meets all other conditions for
8 licensure, except receipt of the Federal Bureau of Investigation's
9 criminal history information for the applicant and persons listed in
10 subdivision (b), the department may issue a license if the applicant
11 and each person described by subdivision (b) has signed and
12 submitted a statement that he or she has never been convicted of
13 a crime in the United States, other than a traffic infraction as
14 defined in paragraph (1) of subdivision (a) of Section 42001 of the
15 Vehicle Code. If, after licensure, the department determines that
16 the licensee or person specified in subdivision (b) has a criminal
17 record, the license may be revoked pursuant to Section 1569.50.
18 The department may also suspend the license pending an
19 administrative hearing pursuant to Sections 1569.50 and 1569.51.

20 (b) In addition to the applicant, the provisions of this section
21 shall apply to criminal convictions of the following persons:

22 (1) (A) Adults responsible for administration or direct
23 supervision of staff.

24 (B) Any person, other than a client, residing in the facility.
25 Residents of unlicensed independent senior housing facilities that
26 are located in contiguous buildings on the same property as a
27 residential care facility for the elderly shall be exempt from these
28 requirements.

29 (C) Any person who provides client assistance in dressing,
30 grooming, bathing, or personal hygiene. Any nurse assistant or
31 home health aide meeting the requirements of Section 1338.5 or
32 1736.6, respectively, who is not employed, retained, or contracted
33 by the licensee, and who has been certified or recertified on or after
34 July 1, 1998, shall be deemed to meet the criminal record clearance
35 requirements of this section. A certified nurse assistant and
36 certified home health aide who will be providing client assistance
37 and who falls under this exemption shall provide one copy of his
38 or her current certification, prior to providing care, to the
39 residential care facility for the elderly. The facility shall maintain
40 the copy of the certification on file as long as the care is being



1 provided by the certified nurse assistant or certified home health
2 aide at the facility. Nothing in this paragraph restricts the right of
3 the department to exclude a certified nurse assistant or certified
4 home health aide from a licensed residential care facility for the
5 elderly pursuant to Section 1569.58.

6 (D) Any staff person, volunteer, or employee who has contact
7 with the clients.

8 (E) If the applicant is a firm, partnership, association, or
9 corporation, the chief executive officer or other person serving in
10 a similar capacity.

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

17 (2) The following persons are exempt from requirements
18 applicable under paragraph (1):

19 (A) A spouse, relative, significant other, or close friend of a
20 client shall be exempt if this person is visiting the client or provides
21 direct care and supervision to that client only.

22 (B) A volunteer to whom all of the following apply:

23 (i) The volunteer is at the facility during normal waking hours.

24 (ii) The volunteer is directly supervised by the licensee or a
25 facility employee with a criminal record clearance or exemption.

26 (iii) The volunteer spends no more than 16 hours per week at
27 the facility.

28 (iv) The volunteer does not provide clients with assistance in
29 dressing, grooming, bathing, or personal hygiene.

30 (v) The volunteer is not left alone with clients in care.

31 (C) A third-party contractor retained by the facility if the
32 contractor is not left alone with clients in care.

33 (D) A third-party contractor or other business professional
34 retained by a client and at the facility at the request or by
35 permission of that client. These individuals may not be left alone
36 with other clients.

37 (E) Licensed or certified medical professionals are exempt
38 from fingerprint and criminal background check requirements
39 imposed by community care licensing. This exemption does not



1 apply to a person who is a community care facility licensee or an
2 employee of the facility.

3 (F) Employees of licensed home health agencies and members
4 of licensed hospice interdisciplinary teams who have contact with
5 a resident of a residential care facility at the request of the resident
6 or resident's legal decisionmaker are exempt from fingerprint and
7 criminal background check requirements imposed by community
8 care licensing. This exemption does not apply to a person who is
9 a community care facility licensee or an employee of the facility.

10 (G) Clergy and other spiritual caregivers who are performing
11 services in common areas of the residential care facility, or who are
12 advising an individual resident at the request of, or with
13 permission of, the resident, are exempt from fingerprint and
14 criminal background check requirements imposed by community
15 care licensing. This exemption does not apply to a person who is
16 a community care facility licensee or an employee of the facility.

17 (H) Any person similar to those described in this subdivision,
18 as defined by the department in regulations.

19 (I) Nothing in this paragraph shall prevent a licensee from
20 requiring a criminal record clearance of any individual exempt
21 from the requirements of this section, provided that the individual
22 has client contact.

23 (c) (1) (A) Subsequent to initial licensure, any person
24 required to be fingerprinted pursuant to subdivision (b) shall, as a
25 condition to employment, residence, or presence in a residential
26 facility for the elderly, be fingerprinted and sign a declaration
27 under penalty of perjury regarding any prior criminal convictions.
28 The licensee shall submit these fingerprints, along with a second
29 set of fingerprints for the purpose of searching the records of the
30 Federal Bureau of Investigation, to the Department of Justice, or
31 to comply with paragraph (1) of subdivision (g) prior to the
32 person's employment, residence, or initial presence in the
33 residential care facility for the elderly.

34 (B) These fingerprints shall be on a fingerprint card provided
35 by the State Department of Social Services, or sent by electronic
36 transmission in a manner approved by the State Department of
37 Social Services and the Department of Justice and submitted to the
38 Department of Justice by the licensee. A licensee's failure to
39 submit fingerprints to the Department of Justice, or to comply with
40 paragraph (1) of subdivision (g), as required in this section, shall



1 result in the citation of a deficiency and an immediate assessment
2 of civil penalties in the amount of one hundred dollars (\$100) per
3 violation, per day for a maximum of five days, unless the violation
4 is a second or subsequent violation within a 12-month period in
5 which case the civil penalties shall be in the amount of one hundred
6 dollars (\$100) per violation for a maximum of 30 days, and shall
7 be grounds for disciplining the licensee pursuant to Section ~~4550~~
8 *1569.50*. The State Department of Social Services may assess civil
9 penalties for continued violations as permitted by Section
10 1569.49. The licensee shall then submit these fingerprints to the
11 State Department of Social Services for processing.
12 Documentation of the individual's clearance or exemption shall be
13 maintained by the licensee and be available for inspection. When
14 live-scan technology is operational, as defined in Section 1522.04,
15 the Department of Justice shall notify the department, as required
16 by that section, and notify the licensee by mail within 14 days of
17 electronic transmission of the fingerprints to the Department of
18 Justice, if the person has no criminal record. A violation of the
19 regulations adopted pursuant to Section 1522.04 shall result in the
20 citation of a deficiency and an immediate assessment of civil
21 penalties in the amount of one hundred dollars (\$100) per
22 violation, per day for a maximum of five days, unless the violation
23 is a second or subsequent violation within a 12-month period in
24 which case the civil penalties shall be in the amount of one hundred
25 dollars (\$100) per violation for a maximum of 30 days, and shall
26 be grounds for disciplining the licensee pursuant to Section ~~4550~~
27 *1569.50*. The department may assess civil penalties for continued
28 violations as permitted by Section 1569.49.

29 (2) Within 14 calendar days of the receipt of the fingerprints,
30 the Department of Justice shall notify the State Department of
31 Social Services of the criminal record information, as provided for
32 in this subdivision. If no criminal record information has been
33 recorded, the Department of Justice shall provide the licensee and
34 the State Department of Social Services with a statement of that
35 fact within 14 calendar days of receipt of the fingerprints. If new
36 fingerprints are required for processing, the Department of Justice
37 shall, within 14 calendar days from the date of receipt of the
38 fingerprints, notify the licensee that the fingerprints were illegible.

39 (3) Except for persons specified in paragraph (2) of subdivision
40 (b), the licensee shall endeavor to ascertain the previous



1 employment history of persons required to be fingerprinted under
2 this subdivision. If the State Department of Social Services
3 determines, on the basis of the fingerprints submitted to the
4 Department of Justice, that the person has been convicted of a sex
5 offense against a minor, an offense specified in Section 243.4,
6 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
7 Department of Social Services shall notify the licensee in writing
8 within 15 calendar days of the receipt of the notification from the
9 Department of Justice to act immediately to terminate the person's
10 employment, remove the person from the residential care facility
11 for the elderly, or bar the person from entering the residential care
12 facility for the elderly. The State Department of Social Services
13 may subsequently grant an exemption pursuant to subdivision (f).
14 If the conviction was for another crime, except a minor traffic
15 violation, the licensee shall, upon notification by the State
16 Department of Social Services, act immediately to either (1)
17 terminate the person's employment, remove the person from the
18 residential care facility for the elderly, or bar the person from
19 entering the residential care facility for the elderly or (2) seek an
20 exemption pursuant to subdivision (f). The department shall
21 determine if the person shall be allowed to remain in the facility
22 until a decision on the exemption is rendered by the department.
23 A licensee's failure to comply with the department's prohibition
24 of employment, contact with clients, or presence in the facility as
25 required by this paragraph shall result in a citation of deficiency
26 and an immediate assessment of civil penalties by the department
27 against the licensee, in the amount of one hundred dollars (\$100)
28 per violation, per day for a maximum of five days, unless the
29 violation is a second or subsequent violation within a 12-month
30 period in which case the civil penalties shall be in the amount of
31 one hundred dollars (\$100) per violation for a maximum of 30
32 days, and shall be grounds for disciplining the licensee pursuant
33 to Section 1569.50.

34 (4) The department may issue an exemption on its own motion
35 pursuant to subdivision (f) if the person's criminal history
36 indicates that the person is of good character based on the age,
37 seriousness, and frequency of the conviction or convictions. The
38 department, in consultation with interested parties, shall develop
39 regulations to establish the criteria to grant an exemption pursuant
40 to this paragraph.



1 (5) Concurrently with notifying the licensee pursuant to
2 paragraph (4), the department shall notify the affected individual
3 of his or her right to seek an exemption pursuant to subdivision (f).
4 The individual may seek an exemption only if the licensee
5 terminates the person’s employment or removes the person from
6 the facility after receiving notice from the department pursuant to
7 paragraph (4).

8 (d) (1) For purposes of this section or any other provision of
9 this chapter, a conviction means a plea or verdict of guilty or a
10 conviction following a plea of nolo contendere. Any action that the
11 department is permitted to take following the establishment of a
12 conviction may be taken when the time for appeal has elapsed,
13 when the judgment of conviction has been affirmed on appeal or
14 when an order granting probation is made suspending the
15 imposition of the sentence, notwithstanding a subsequent order
16 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
17 Penal Code permitting a person to withdraw his or her plea of
18 guilty and to enter a plea of not guilty, or setting aside the verdict
19 of guilty, or dismissing the accusation, information, or indictment.
20 For purposes of this section or any other provision of this chapter,
21 the record of a conviction, or a copy thereof certified by the clerk
22 of the court or by a judge of the court in which the conviction
23 occurred, shall be conclusive evidence of the conviction. For
24 purposes of this section or any other provision of this chapter, the
25 arrest disposition report certified by the Department of Justice or
26 documents admissible in a criminal action pursuant to Section
27 969b of the Penal Code shall be prima facie evidence of the
28 conviction, notwithstanding any other provision of law
29 prohibiting the admission of these documents in a civil or
30 administrative action.

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

35 (e) The State Department of Social Services may not use a
36 record of arrest to deny, revoke, or terminate any application,
37 license, employment, or residence unless the department
38 investigates the incident and secures evidence, whether or not
39 related to the incident of arrest, that is admissible in an
40 administrative hearing to establish conduct by the person that may



1 pose a risk to the health and safety of any person who is or may
 2 become a client. The State Department of Social Services is
 3 authorized to obtain any arrest or conviction records or reports
 4 from any law enforcement agency as necessary to the performance
 5 of its duties to inspect, license, and investigate community care
 6 facilities and individuals associated with a community care
 7 facility.

8 (f) (1) After review of the record, the director may grant an
 9 exemption from disqualification for a license as specified in
 10 paragraphs (1) and (4) of subdivision (a), or for employment,
 11 residence, or presence in a residential care facility for the elderly
 12 as specified in paragraphs (4), (5), and (6) of subdivision (c) if the
 13 director has substantial and convincing evidence to support a
 14 reasonable belief that the applicant and the person convicted of the
 15 crime, if other than the applicant, are of such good character as to
 16 justify issuance of the license or special permit or granting an
 17 exemption for purposes of subdivision (c). However, an
 18 exemption may not be granted pursuant to this subdivision if the
 19 conviction was for any of the following offenses:

20 (A) An offense specified in Section 220, 243.4, or 264.1,
 21 subdivision (a) of Section 273a or, prior to January 1, 1994,
 22 paragraph (1) of Section 273a, Section 273d, 288, or 289,
 23 subdivision (a) of Section 290, or Section 368 of the Penal Code,
 24 or was a conviction of another crime against an individual
 25 specified in subdivision (c) of Section 667.5 of the Penal Code.

26 (B) A felony offense specified in Section 729 of the Business
 27 and Professions Code or Section 206 or 215, subdivision (a) of
 28 Section 347, subdivision (b) of Section 417, or subdivision (a) of
 29 Section 451 of the Penal Code.

30 (2) The director shall notify in writing the licensee or the
 31 applicant of his or her decision within 60 days of receipt of all
 32 information from the applicant and other sources determined
 33 necessary by the director for the rendering of a decision pursuant
 34 to this subdivision.

35 (3) The department may not prohibit a person from being
 36 employed or having contact with clients in a facility on the basis
 37 of a denied criminal record exemption request or arrest
 38 information unless the department complies with the requirements
 39 of Section 1569.58.



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

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

20 (h) If a licensee or facility is required by law to deny
21 employment or to terminate employment of any employee based
22 on written notification from the department that the employee has
23 a prior criminal conviction or is determined unsuitable for
24 employment under Section 1569.58, the licensee or facility shall
25 not incur civil liability or unemployment insurance liability as a
26 result of that denial or termination.

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

34 SEC. 4. Section 1596.871 of the Health and Safety Code is
35 amended to read:

36 1596.871. The Legislature recognizes the need to generate
37 timely and accurate positive fingerprint identification of
38 applicants as a condition of issuing licenses, permits, or
39 certificates of approval for persons to operate or provide direct
40 care services in a child care center or family child care home.



1 Therefore, the Legislature supports the use of the fingerprint
2 live-scan technology, as defined in the long-range plan of the
3 Department of Justice for fully automating the processing of
4 fingerprints and other data by the year 1999, otherwise known as
5 the California Crime Information Intelligence System (CAL-CII),
6 to be used for applicant fingerprints. It is the intent of the
7 Legislature in enacting this section to require the fingerprints of
8 those individuals whose contact with child day care facility clients
9 may pose a risk to the children's health and safety.

10 (a) (1) Before issuing a license or special permit to any person
11 to operate or manage a day care facility, the department shall
12 secure from an appropriate law enforcement agency a criminal
13 record to determine whether the applicant or any other person
14 specified in subdivision (b) has ever been convicted of a crime
15 other than a minor traffic violation or arrested for any crime
16 specified in Section 290 of the Penal Code, for violating Section
17 245 or 273.5, subdivision (b) of Section 273a or, prior to January
18 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
19 any crime for which the department cannot grant an exemption if
20 the person was convicted and the person has not been exonerated.

21 (2) The criminal history information shall include the full
22 criminal record, if any, of those persons, and subsequent arrest
23 information pursuant to Section 11105.2 of the Penal Code.

24 (3) Except during the 2003–04 fiscal year, neither the
25 Department of Justice nor the department may charge a fee for the
26 fingerprinting of an applicant who will serve six or fewer children
27 or any family day care applicant for a license, or for obtaining a
28 criminal record of an applicant pursuant to this section.

29 (4) The following shall apply to the criminal record
30 information:

31 (A) If the State Department of Social Services finds that the
32 applicant or any other person specified in subdivision (b) has been
33 convicted of a crime, other than a minor traffic violation, the
34 application shall be denied, unless the director grants an
35 exemption pursuant to subdivision (f).

36 (B) If the State Department of Social Services finds that the
37 applicant, or any other person specified in subdivision (b), is
38 awaiting trial for a crime other than a minor traffic violation, the
39 State Department of Social Services may cease processing the
40 application until the conclusion of the trial.



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

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

9 (E) An applicant and any other person specified in subdivision
10 (b) shall submit a second set of fingerprints to the Department of
11 Justice, for the purpose of searching the records of the Federal
12 Bureau of Investigation, in addition to the search required by
13 subdivision (a). If an applicant meets all other conditions for
14 licensure, except receipt of the Federal Bureau of Investigation's
15 criminal history information for the applicant and persons listed in
16 subdivision (b), the department may issue a license if the applicant
17 and each person described by subdivision (b) has signed and
18 submitted a statement that he or she has never been convicted of
19 a crime in the United States, other than a traffic infraction as
20 defined in paragraph (1) of subdivision (a) of Section 42001 of the
21 Vehicle Code. If, after licensure, the department determines that
22 the licensee or person specified in subdivision (b) has a criminal
23 record, the license may be revoked pursuant to Section 1596.885.
24 The department may also suspend the license pending an
25 administrative hearing pursuant to Section 1596.886.

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

28 (A) Adults responsible for administration or direct supervision
29 of staff.

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

31 (C) Any person who provides care and supervision to the
32 children.

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

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



1 (ii) A student enrolled or participating at an accredited
2 educational institution shall be exempt from the requirements of
3 this subdivision if the student is directly supervised by the licensee
4 or a facility employee with a criminal record clearance or
5 exemption, the facility has an agreement with the educational
6 institution concerning the placement of the student, the student
7 spends no more than 16 hours per week at the facility, and the
8 student is not left alone with children in care.

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

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

15 (v) Any person similar to those described in this subdivision,
16 as defined by the department in regulations.

17 (E) If the applicant is a firm, partnership, association, or
18 corporation, the chief executive officer, other person serving in
19 like capacity, or a person designated by the chief executive officer
20 as responsible for the operation of the facility, as designated by the
21 applicant agency.

22 (F) If the applicant is a local educational agency, the president
23 of the governing board, the school district superintendent, or a
24 person designated to administer the operation of the facility, as
25 designated by the local educational agency.

26 (G) Additional officers of the governing body of the applicant,
27 or other persons with a financial interest in the applicant, as
28 determined necessary by the department by regulation. The
29 criteria used in the development of these regulations shall be based
30 on the person's capability to exercise substantial influence over the
31 operation of the facility.

32 (H) This section does not apply to employees of child care and
33 development programs under contract with the State Department
34 of Education who have completed a criminal records clearance as
35 part of an application to the Commission on Teacher
36 Credentialing, and who possess a current credential or permit
37 issued by the commission, including employees of child care and
38 development programs that serve both children subsidized under,
39 and children not subsidized under, a State Department of
40 Education contract. The Commission on Teacher Credentialing



1 shall notify the department upon revocation of a current credential
2 or permit issued to an employee of a child care and development
3 program under contract with the State Department of Education.

4 (I) This section does not apply to employees of a child care and
5 development program operated by a school district, county office
6 of education, or community college district under contract with the
7 State Department of Education who have completed a criminal
8 record clearance as a condition of employment. The school
9 district, county office of education, or community college district
10 upon receiving information that the status of an employee's
11 criminal record clearance has changed shall submit that
12 information to the department.

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

16 (c) (1) (A) Subsequent to initial licensure, any person
17 specified in subdivision (b) and not exempted from fingerprinting
18 shall, as a condition to employment, residence, or presence in a
19 child day care facility be fingerprinted and sign a declaration under
20 penalty of perjury regarding any prior criminal conviction. The
21 licensee shall submit these fingerprints to the Department of
22 Justice, along with a second set of fingerprints for the purpose of
23 searching the records of the Federal Bureau of Investigation, or to
24 comply with paragraph (1) of subdivision (h), prior to the person's
25 employment, residence, or initial presence in the child day care
26 facility.

27 (B) These fingerprints shall be on a card provided by the State
28 Department of Social Services for the purpose of obtaining a
29 permanent set of fingerprints and submitted to the Department of
30 Justice by the licensee or sent by electronic transmission in a
31 manner approved by the State Department of Social Services. A
32 licensee's failure to submit fingerprints to the Department of
33 Justice, or to comply with paragraph (1) of subdivision (h), as
34 required in this section, shall result in the citation of a deficiency,
35 and an immediate assessment of civil penalties in the amount of
36 one hundred dollars (\$100) per violation, per day for a maximum
37 of five days, unless the violation is a second or subsequent
38 violation within a 12-month period in which case the civil
39 penalties shall be in the amount of one hundred dollars (\$100) per
40 violation for a maximum of 30 days, and shall be grounds for



1 disciplining the licensee pursuant to Section 1596.885 or Section
2 1596.886. The State Department of Social Services may assess
3 civil penalties for continued violations permitted by Sections
4 1596.99 and 1597.62. The fingerprints shall then be submitted to
5 the State Department of Social Services for processing. Within 14
6 calendar days of the receipt of the fingerprints, the Department of
7 Justice shall notify the State Department of Social Services of the
8 criminal record information, as provided in this subdivision. If no
9 criminal record information has been recorded, the Department of
10 Justice shall provide the licensee and the State Department of
11 Social Services with a statement of that fact within 14 calendar
12 days of receipt of the fingerprints. If new fingerprints are required
13 for processing, the Department of Justice shall, within 14 calendar
14 days from the date of receipt of the fingerprints, notify the licensee
15 that the fingerprints were illegible.

16 (C) Documentation of the individual's clearance or exemption
17 shall be maintained by the licensee, and shall be available for
18 inspection. When live-scan technology is operational, as defined
19 in Section 1522.04, the Department of Justice shall notify the
20 department, as required by that section, and notify the licensee by
21 mail within 14 days of electronic transmission of the fingerprints
22 to the Department of Justice, if the person has no criminal record.
23 Any violation of the regulations adopted pursuant to Section
24 1522.04 shall result in the citation of a deficiency and an
25 immediate assessment of civil penalties in the amount of one
26 hundred dollars (\$100) per violation, *per day for a maximum of*
27 *five days, unless the violation is a second or subsequent violation*
28 *within a 12-month period in which case the civil penalties shall be*
29 *in the amount of one hundred dollars (\$100) per violation for a*
30 *maximum of 30 days, and shall be grounds for disciplining the*
31 *licensee pursuant to Section 1596.885 or Section 1596.886. The*
32 department may assess civil penalties for continued violations, as
33 permitted by Sections 1596.99 and 1597.62.

34 (2) Except for persons specified in paragraph (2) of subdivision
35 (b), the licensee shall endeavor to ascertain the previous
36 employment history of persons required to be fingerprinted under
37 this subdivision. If it is determined by the department, on the basis
38 of fingerprints submitted to the Department of Justice, that the
39 person has been convicted of a sex offense against a minor, an
40 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the



1 Penal Code, or a felony, the State Department of Social Services
2 shall notify the licensee to act immediately to terminate the
3 person's employment, remove the person from the child day care
4 facility, or bar the person from entering the child day care facility.
5 The department may subsequently grant an exemption pursuant to
6 subdivision (f). If the conviction was for another crime except a
7 minor traffic violation, the licensee shall, upon notification by the
8 State Department of Social Services, act immediately to either (1)
9 terminate the person's employment, remove the person from the
10 child day care facility, or bar the person from entering the child day
11 care facility; or (2) seek an exemption pursuant to subdivision (f).
12 The department shall determine if the person shall be allowed to
13 remain in the facility until a decision on the exemption is rendered.
14 A licensee's failure to comply with the department's prohibition
15 of employment, contact with clients, or presence in the facility as
16 required by this paragraph shall result in a citation of deficiency
17 and an immediate assessment of civil penalties by the department
18 against the licensee, in the amount of one hundred dollars (\$100)
19 per violation, per day for a maximum of five days, unless the
20 violation is a second or subsequent violation within a 12-month
21 period in which case the civil penalties shall be in the amount of
22 one hundred dollars (\$100) per violation for a maximum of 30
23 days, and shall be grounds for disciplining the licensee pursuant
24 to Section 1596.885 or 1596.886.

25 (3) The department may issue an exemption on its own motion
26 pursuant to subdivision (f) if the person's criminal history
27 indicates that the person is of good character based on the age,
28 seriousness, and frequency of the conviction or convictions. The
29 department, in consultation with interested parties, shall develop
30 regulations to establish the criteria to grant an exemption pursuant
31 to this paragraph.

32 (4) Concurrently with notifying the licensee pursuant to
33 paragraph (3), the department shall notify the affected individual
34 of his or her right to seek an exemption pursuant to subdivision (f).
35 The individual may seek an exemption only if the licensee
36 terminates the person's employment or removes the person from
37 the facility after receiving notice from the department pursuant to
38 paragraph (3).

39 (d) (1) For purposes of this section or any other provision of
40 this chapter, a conviction means a plea or verdict of guilty or a



1 conviction following a plea of nolo contendere. Any action that the
2 department is permitted to take following the establishment of a
3 conviction may be taken when the time for appeal has elapsed,
4 when the judgment of conviction has been affirmed on appeal, or
5 when an order granting probation is made suspending the
6 imposition of sentence, notwithstanding a subsequent order
7 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
8 permitting the person to withdraw his or her plea of guilty and to
9 enter a plea of not guilty, or setting aside the verdict of guilty, or
10 dismissing the accusation, information, or indictment. For
11 purposes of this section or any other provision of this chapter, the
12 record of a conviction, or a copy thereof certified by the clerk of
13 the court or by a judge of the court in which the conviction
14 occurred, shall be conclusive evidence of the conviction. For
15 purposes of this section or any other provision of this chapter, the
16 arrest disposition report certified by the Department of Justice, or
17 documents admissible in a criminal action pursuant to Section
18 969b of the Penal Code, shall be prima facie evidence of
19 conviction, notwithstanding any other provision of law
20 prohibiting the admission of these documents in a civil or
21 administrative action.

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

26 (e) The State Department of Social Services may not use a
27 record of arrest to deny, revoke, or terminate any application,
28 license, employment, or residence unless the department
29 investigates the incident and secures evidence, whether or not
30 related to the incident of arrest, that is admissible in an
31 administrative hearing to establish conduct by the person that may
32 pose a risk to the health and safety of any person who is or may
33 become a client. The State Department of Social Services is
34 authorized to obtain any arrest or conviction records or reports
35 from any law enforcement agency as necessary to the performance
36 of its duties to inspect, license, and investigate community care
37 facilities and individuals associated with a community care
38 facility.

39 (f) (1) After review of the record, the director may grant an
40 exemption from disqualification for a license or special permit as



1 specified in paragraphs (1) and (4) of subdivision (a), or for
2 employment, residence, or presence in a child day care facility as
3 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
4 director has substantial and convincing evidence to support a
5 reasonable belief that the applicant and the person convicted of the
6 crime, if other than the applicant, are of good character so as to
7 justify issuance of the license or special permit or granting an
8 exemption for purposes of subdivision (c). However, an
9 exemption may not be granted pursuant to this subdivision if the
10 conviction was for any of the 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 Section 368 of the Penal Code,
15 or was a conviction of another crime against an individual
16 specified in subdivision (c) of Section 667.5 of the Penal Code.

17 (B) A felony offense specified in Section 729 of the Business
18 and Professions Code or Section 206 or 215, subdivision (a) of
19 Section 347, subdivision (b) of Section 417, or subdivision (a) or
20 (b) of Section 451 of the Penal Code.

21 (2) The department may not prohibit a person from being
22 employed or having contact with clients in a facility on the basis
23 of a denied criminal record exemption request or arrest
24 information unless the department complies with the requirements
25 of Section 1596.8897.

26 (g) Upon request of the licensee, who shall enclose a
27 self-addressed stamped postcard for this purpose, the Department
28 of Justice shall verify receipt of the fingerprints.

29 (h) (1) For the purposes of compliance with this section, the
30 department may permit an individual to transfer a current criminal
31 record clearance, as defined in subdivision (a), from one facility
32 to another, as long as the criminal record clearance has been
33 processed through a state licensing district office, and is being
34 transferred to another facility licensed by a state licensing district
35 office. The request shall be in writing to the department, and shall
36 include a copy of the person's driver's license or valid
37 identification card issued by the Department of Motor Vehicles, or
38 a valid photo identification issued by another state or the United
39 States government if the person is not a California resident. Upon
40 request of the licensee, who shall enclose a self-addressed stamped



1 envelope for this purpose, the department shall verify whether the
2 individual has a clearance that can be transferred.

3 (2) The State Department of Social Services shall hold criminal
4 record clearances in its active files for a minimum of two years
5 after an employee is no longer employed at a licensed facility in
6 order for the criminal record clearances to be transferred.

7 (3) *The following shall apply to a criminal record clearance or
8 exemption from the department or a county office with department
9 delegated licensing authority:*

10 (A) *A county office with department delegated licensing
11 authority may accept a clearance or exemption from the
12 department.*

13 (B) *The department may accept a clearance or exemption from
14 any county office with department delegated licensing authority.*

15 (C) *A county office with department delegated licensing
16 authority may accept a clearance or exemption from any other
17 county office with department delegated licensing authority.*

18 (4) *With respect to notifications issued by the Department of
19 Justice pursuant to Section 11105.2 of the Penal Code concerning
20 an individual whose criminal record clearance was originally
21 processed by the department or a county office with department
22 delegated licensing authority, all of the following shall apply:*

23 (A) *The Department of Justice shall process a request from the
24 department or a county office with department delegated licensing
25 authority to receive the notice in substitution of, or in addition to,
26 the original recipient of the notice, if all of the following conditions
27 are met:*

28 (i) *The request shall be submitted to the Department of Justice
29 by the agency to be substituted or added to the notification process.*

30 (ii) *The request shall be for the same applicant type as the type
31 for which the original clearance was obtained.*

32 (iii) *The Department of Justice shall provide a notification that
33 includes prescribed data elements and format protocols pursuant
34 to a written agreement between the department and the
35 Department of Justice.*

36 (B) (i) *On or before January 7, 2005, the department shall
37 notify the Department of Justice of all county offices that have
38 department delegated licensing authority.*

39 (ii) *The department shall notify the Department of Justice
40 within 15 calendar days of the date on which a new county office*



1 *receives department delegated licensing authority or a county's*
2 *delegated licensing authority is rescinded.*

3 *(C) The Department of Justice shall charge the department or*
4 *a county office with department delegated licensing authority a fee*
5 *for each time a request to modify the recipient agency is received*
6 *for purposes of this paragraph. This fee shall not exceed the cost*
7 *of providing the service.*

8 (i) Amendments to this section made in the 1998 calendar year
9 shall be implemented commencing 60 days after the effective date
10 of the act amending this section in the 1998 calendar year, except
11 those provisions for the submission of fingerprints for searching
12 the records of the Federal Bureau of Investigation, which shall be
13 implemented commencing January 1, 1999.

14
15
16 **All matter omitted in this version of the**
17 **bill appears in the bill as amended in the**
18 **Senate, June 17, 2004. (JR 11)**
19
20

