

AMENDED IN SENATE AUGUST 23, 2004
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, 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.

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. 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 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
23 subdivision (b) has ever been convicted of a crime other than a
24 minor traffic violation or arrested for any crime specified in
25 Section 290 of the Penal Code, for violating Section 245 or 273.5
26 of the Penal Code, subdivision (b) of Section 273a of the Penal
27 Code, or, prior to January 1, 1994, paragraph (2) of Section 273a
28 of the Penal Code, or for any crime for which the department



1 cannot grant an exemption if the person was convicted and the
2 person has not been exonerated.

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

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

12 (4) The following shall apply to the criminal record
13 information:

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

19 (B) If the State Department of Social Services finds that the
20 applicant, or any other person specified in subdivision (b) is
21 awaiting trial for a crime other than a minor traffic violation, the
22 State Department of Social Services may cease processing the
23 application until the conclusion of the trial.

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

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

33 (E) An applicant and any other person specified in subdivision
34 (b) shall submit a second set of fingerprints to the Department of
35 Justice for the purpose of searching the criminal records of the
36 Federal Bureau of Investigation, in addition to the criminal records
37 search required by this subdivision. If an applicant and all other
38 persons described in subdivision (b) meet all of the conditions for
39 licensure, except receipt of the Federal Bureau of Investigation's
40 criminal history information for the applicant or any of the persons



1 described in subdivision (b), the department may issue a license if
2 the applicant and each person described in subdivision (b) has
3 signed and submitted a statement that he or she has never been
4 convicted of a crime in the United States, other than a traffic
5 infraction, as defined in paragraph (1) of subdivision (a) of Section
6 42001 of the Vehicle Code. If, after licensure, the department
7 determines that the licensee or any other person specified in
8 subdivision (b) has a criminal record, the license may be revoked
9 pursuant to Section 1550. The department may also suspend the
10 license pending an administrative hearing pursuant to Section
11 1550.5.

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

14 (A) Adults responsible for administration or direct supervision
15 of staff.

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

17 (C) Any person who provides client assistance in dressing,
18 grooming, bathing, or personal hygiene. Any nurse assistant or
19 home health aide meeting the requirements of Section 1338.5 or
20 1736.6, respectively, who is not employed, retained, or contracted
21 by the licensee, and who has been certified or recertified on or after
22 July 1, 1998, shall be deemed to meet the criminal record clearance
23 requirements of this section. A certified nurse assistant and
24 certified home health aide who will be providing client assistance
25 and who falls under this exemption shall provide one copy of his
26 or her current certification, prior to providing care, to the
27 community care facility. The facility shall maintain the copy of the
28 certification on file as long as care is being provided by the
29 certified nurse assistant or certified home health aide at the facility.
30 Nothing in this paragraph restricts the right of the department to
31 exclude a certified nurse assistant or certified home health aide
32 from a licensed community care facility pursuant to Section 1558.

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

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

38 (F) Additional officers of the governing body of the applicant,
39 or other persons with a financial interest in the applicant, as
40 determined necessary by the department by regulation. The



1 criteria used in the development of these regulations shall be based
2 on the person's capability to exercise substantial influence over the
3 operation of the facility.

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

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

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

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

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

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

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

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

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

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

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

33 (D) Clergy and other spiritual caregivers who are performing
34 services in common areas of the community care facility or who
35 are advising an individual client at the request of, or with the
36 permission of, the client or legal decisionmaker, are exempt from
37 fingerprint and criminal background check requirements imposed
38 by community care licensing. This exemption does not apply to a
39 person who is a community care licensee or employee of the
40 facility.



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

- 3 (i) Members are not left alone with clients.
- 4 (ii) Members do not transport clients off the facility premises.
- 5 (iii) The same organization does not conduct group activities
6 for clients more often than defined by the department's
7 regulations.

8 (3) In addition to the exemptions in paragraph (2), the
9 following persons in foster family homes, certified family homes,
10 and small family homes are exempt from the requirements
11 applicable under paragraph (1):

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

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

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

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

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

- 30 (i) The volunteer is supervised by the licensee or a facility
31 employee with a criminal record clearance or exemption.
- 32 (ii) The volunteer is never left alone with clients.
- 33 (iii) The volunteer does not provide any client assistance with
34 dressing, grooming, bathing, or personal hygiene other than
35 washing of hands.

36 (5) (A) In addition to the exemptions specified in paragraph
37 (2), the following persons in adult residential and social
38 rehabilitation facilities, unless contraindicated by the client's
39 individualized program plan (IPP) or needs and services plan, are
40 exempt from the requirements applicable under paragraph (1): a



1 spouse, significant other, relative, or close friend of a client, or an
2 attendant or a facilitator for a client with a developmental
3 disability if the attendant or facilitator is not employed, retained,
4 or contracted by the licensee. This exemption applies only if the
5 person is visiting the client or providing direct care and
6 supervision to that client.

7 (B) Nothing in this subdivision shall prevent a licensee from
8 requiring a criminal record clearance of any individual exempt
9 from the requirements of this section, provided that the individual
10 has client contact.

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

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



1 processing. Upon request of the licensee, who shall enclose a
2 self-addressed stamped postcard for this purpose, the Department
3 of Justice shall verify receipt of the fingerprints.

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

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



1 of Social Services shall notify the licensee to act immediately to
2 terminate the person's employment, remove the person from the
3 community care facility, or bar the person from entering the
4 community care facility. The State Department of Social Services
5 may subsequently grant an exemption pursuant to subdivision (g).
6 If the conviction or arrest was for another crime, except a minor
7 traffic violation, the licensee shall, upon notification by the State
8 Department of Social Services, act immediately to either (1)
9 terminate the person's employment, remove the person from the
10 community care facility, or bar the person from entering the
11 community care facility; or (2) seek an exemption pursuant to
12 subdivision (g). The State Department of Social Services shall
13 determine if the person shall be allowed to remain in the facility
14 until a decision on the exemption is rendered. A licensee's failure
15 to comply with the department's prohibition of employment,
16 contact with clients, or presence in the facility as required by this
17 paragraph shall be grounds for disciplining the licensee pursuant
18 to Section 1550.

19 (4) The department may issue an exemption on its own motion
20 pursuant to subdivision (g) if the person's criminal history
21 indicates that the person is of good character based on the age,
22 seriousness, and frequency of the conviction or convictions. The
23 department, in consultation with interested parties, shall develop
24 regulations to establish the criteria to grant an exemption pursuant
25 to this paragraph.

26 (5) Concurrently with notifying the licensee pursuant to
27 paragraph (3), the department shall notify the affected individual
28 of his or her right to seek an exemption pursuant to subdivision (g).
29 The individual may seek an exemption only if the licensee
30 terminates the person's employment or removes the person from
31 the facility after receiving notice from the department pursuant to
32 paragraph (3).

33 (d) (1) Before issuing a license, special permit, or certificate
34 of approval to any person or persons to operate or manage a foster
35 family home or certified family home as described in Section
36 1506, the State Department of Social Services or other approving
37 authority shall secure from an appropriate law enforcement
38 agency a criminal record to determine whether the applicant or any
39 person specified in subdivision (b) has ever been convicted of a
40 crime other than a minor traffic violation or arrested for any crime



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

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

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

13 (4) The following shall apply to the criminal record
14 information:

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

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

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

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



1 of Section 42001 of the Vehicle Code. If, after licensure or
2 certification, the department determines that the licensee, certified
3 foster parent, or any person specified in subdivision (b) has a
4 criminal record, the license may be revoked pursuant to Section
5 1550 and the certificate of approval revoked pursuant to
6 subdivision (b) of Section 1534. The department may also suspend
7 the license pending an administrative hearing pursuant to Section
8 1550.5.

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

16 (6) (A) The foster family agency shall obtain fingerprints from
17 certified home applicants and from persons specified in
18 subdivision (b) and shall submit them directly to the Department
19 of Justice or send them by electronic transmission in a manner
20 approved by the State Department of Social Services. A foster
21 family home licensee or foster family agency shall submit these
22 fingerprints to the Department of Justice, along with a second set
23 of fingerprints for the purpose of searching the records of the
24 Federal Bureau of Investigation or to comply with paragraph (1)
25 of subdivision (b) prior to the person's employment, residence, or
26 initial presence. A foster family agency's failure to submit
27 fingerprints to the Department of Justice, or comply with
28 paragraph (1) of subdivision (h), as required in this section, shall
29 result in a citation of a deficiency, and the immediate civil penalties
30 of one hundred dollars (\$100) per violation, per day for a
31 maximum of five days, unless the violation is a second or
32 subsequent violation within a 12-month period in which case the
33 civil penalties shall be in the amount of one hundred dollars (\$100)
34 per violation for a maximum of 30 days, and shall be grounds for
35 disciplining the licensee pursuant to Section 1550. A violation of
36 the regulation adopted pursuant to Section 1522.04 shall result in
37 the citation of a deficiency and an immediate assessment of civil
38 penalties in the amount of one hundred dollars (\$100) per
39 violation, per day for a maximum of five days, unless the violation
40 is a second or subsequent violation within a 12-month period in



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

16 (B) Upon request of the licensee, who shall enclose a
17 self-addressed envelope for this purpose, the Department of
18 Justice shall verify receipt of the fingerprints. Within five working
19 days of the receipt of the criminal record or information regarding
20 criminal convictions from the Department of Justice, the
21 department shall notify the applicant of any criminal arrests or
22 convictions. If no arrests or convictions are recorded, the
23 Department of Justice shall provide the foster family home
24 licensee or the foster family agency with a statement of that fact
25 concurrent with providing the information to the State Department
26 of Social Services.

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

32 (8) If the State Department of Social Services finds after
33 licensure or the granting of the certificate of approval that the
34 licensee, certified foster parent, 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 or certificate of
37 approval may be revoked by the department or the foster family
38 agency, whichever is applicable, unless the director grants an
39 exemption pursuant to subdivision (g). A licensee's failure to
40 comply with the department's prohibition of employment, contact



1 with clients, or presence in the facility as required by paragraph (3)
2 of subdivision (c) shall be grounds for disciplining the licensee
3 pursuant to Section 1550.

4 (e) The State Department of Social Services may not use a
5 record of arrest to deny, revoke, or terminate any application,
6 license, employment, or residence unless the department
7 investigates the incident and secures evidence, whether or not
8 related to the incident of arrest, that is admissible in an
9 administrative hearing to establish conduct by the person that may
10 pose a risk to the health and safety of any person who is or may
11 become a client. The State Department of Social Services is
12 authorized to obtain any arrest or conviction records or reports
13 from any law enforcement agency as necessary to the performance
14 of its duties to inspect, license, and investigate community care
15 facilities and individuals associated with a community care
16 facility.

17 (f) (1) For purposes of this section or any other provision of
18 this chapter, a conviction means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. Any action that the
20 State Department of Social Services is permitted to take following
21 the establishment of a conviction may be taken when the time for
22 appeal has elapsed, when the judgment of conviction has been
23 affirmed on appeal, or when an order granting probation is made
24 suspending the imposition of sentence, notwithstanding a
25 subsequent order pursuant to Sections 1203.4 and 1203.4a of the
26 Penal Code permitting the person to withdraw his or her plea of
27 guilty and to enter a plea of not guilty, or setting aside the verdict
28 of guilty, or dismissing the accusation, information, or indictment.
29 For purposes of this section or any other provision of this chapter,
30 the record of a conviction, or a copy thereof certified by the clerk
31 of the court or by a judge of the court in which the conviction
32 occurred, shall be conclusive evidence of the conviction. For
33 purposes of this section or any other provision of this chapter, the
34 arrest disposition report certified by the Department of Justice, or
35 documents admissible in a criminal action pursuant to Section
36 969b of the Penal Code, shall be prima facie evidence of the
37 conviction, notwithstanding any other provision of law
38 prohibiting the admission of these documents in a civil or
39 administrative action.



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

5 (g) (1) After review of the record, the director may grant an
6 exemption from disqualification for a license or special permit as
7 specified in paragraphs (1) and (4) of subdivision (a), or for a
8 license, special permit, or certificate of approval as specified in
9 paragraphs (4) and (5) of subdivision (d), or for employment,
10 residence, or presence in a community care facility as specified in
11 paragraphs (3), (4), and (5) 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). Except as otherwise provided in this
17 subdivision, an exemption may not be granted pursuant to this
18 subdivision if the conviction was for any of the following offenses:

19 (A) (i) 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 (ii) Notwithstanding clause (i), the director may grant an
26 exemption regarding the conviction for an offense described in
27 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
28 of the Penal Code, if the employee or prospective employee has
29 been rehabilitated as provided in Section 4852.03 of the Penal
30 Code, has maintained the conduct required in Section 4852.05 of
31 the Penal Code for at least 10 years, and has the recommendation
32 of the district attorney representing the employee's county of
33 residence, or if the employee or prospective employee has
34 received a certificate of rehabilitation pursuant to Chapter 3.5
35 (commencing with Section 4852.01) of Title 6 of Part 3 of the
36 Penal Code.

37 (B) A felony offense specified in Section 729 of the Business
38 and Professions Code or Section 206 or 215, subdivision (a) of
39 Section 347, subdivision (b) of Section 417, or subdivision (a) of
40 Section 451 of the Penal Code.



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

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

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

25 (3) The following shall apply to a criminal record clearance or
26 exemption from the department or a county office with department
27 delegated licensing authority:

28 (A) A county office with department delegated licensing
29 authority may accept a clearance or exemption from the
30 department.

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

33 (C) A county office with department delegated licensing
34 authority may accept a clearance or exemption from any other
35 county office with department delegated licensing authority.

36 (4) With respect to notifications issued by the Department of
37 Justice pursuant to Section 11105.2 of the Penal Code concerning
38 an individual whose criminal record clearance was originally
39 processed by the department or a county office with department
40 delegated licensing authority, all of the following shall apply:



1 (A) The Department of Justice shall process a request from the
2 department or a county office with department delegated licensing
3 authority to receive the notice *only* if all of the following
4 conditions are met:

5 (i) The request shall be submitted to the Department of Justice
6 by the agency to be substituted ~~or added to the notification process~~
7 *to receive the notification.*

8 (ii) The request shall be for the same applicant type as the type
9 for which the original clearance was obtained.

10 ~~(iii) The Department of Justice shall provide a notification that~~
11 ~~includes~~

12 *(iii) The request shall contain all* prescribed data elements and
13 format protocols pursuant to a written agreement between the
14 department and the Department of Justice.

15 (B) (i) On or before January 7, 2005, the department shall
16 notify the Department of Justice of all county offices that have
17 department delegated licensing authority.

18 (ii) The department shall notify the Department of Justice
19 within 15 calendar days of the date on which a new county office
20 receives department delegated licensing authority or a county's
21 delegated licensing authority is rescinded.

22 (C) The Department of Justice shall charge the department or
23 a county office with department delegated licensing authority a fee
24 for each time a request to ~~modify~~ *substitute* the recipient agency
25 is received for purposes of this paragraph. This fee shall not exceed
26 the cost of providing the service.

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

30 (j) If a licensee or facility is required by law to deny
31 employment or to terminate employment of any employee based
32 on written notification from the state department that the employee
33 has a prior criminal conviction or is determined unsuitable for
34 employment under Section 1558, the licensee or facility shall not
35 incur civil liability or unemployment insurance liability as a result
36 of that denial or termination.

37 (k) (1) The Department of Justice shall coordinate with the
38 State Department of Social Services to establish and implement an
39 automated live-scan processing system for fingerprints in the
40 district offices of the Community Care Licensing Division of the



1 State Department of Social Services by July 1, 1999. These
2 live-scan processing units shall be connected to the main system
3 at the Department of Justice by July 1, 1999, and shall become part
4 of that department's pilot project in accordance with its long-range
5 plan. The State Department of Social Services may charge a fee for
6 the costs of processing a set of live-scan fingerprints.

7 (2) The Department of Justice shall provide a report to the
8 Senate and Assembly fiscal committees, the Assembly Human
9 Services Committee, and to the Senate Health and Human
10 Services Committee by April 15, 1999, regarding the completion
11 of backlogged criminal record clearance requests for all facilities
12 licensed by the State Department of Social Services and the
13 progress on implementing the automated live-scan processing
14 system in the two district offices pursuant to paragraph (1).

15 (l) Amendments to this section made in the 1999 portion of the
16 1999–2000 Regular Session shall be implemented commencing
17 60 days after the effective date of the act amending this section in
18 the 1999 portion of the 1999–2000 Regular Session, except that
19 those provisions for the submission of fingerprints for searching
20 the records of the Federal Bureau of Investigation shall be
21 implemented 90 days after the effective date of that act.

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

24 1568.09. It is the intent of the Legislature in enacting this
25 section to require the fingerprints of those individuals whose
26 contact with residents of residential care facilities for persons with
27 a chronic, life-threatening illness may pose a risk to the residents'
28 health and safety.

29 Therefore, the Legislature supports the use of the fingerprint
30 live-scan technology, as identified in the long-range plan of the
31 Department of Justice for fully automating the processing of
32 fingerprints and other data by the year 1999, otherwise known as
33 the California Crime Information Intelligence System (CAL-CII),
34 to be used for applicant fingerprints. It is the intent of the
35 Legislature, in enacting this section, to require the fingerprints of
36 those individuals whose contact with community care clients may
37 pose a risk to the clients' health and safety.

38 (a) (1) Before issuing a license to any person or persons to
39 operate or manage a residential care facility, the department shall
40 secure from an appropriate law enforcement agency a criminal



1 record to determine whether the applicant or any other person
2 specified in subdivision (b) has ever been convicted of a crime
3 other than a minor traffic violation or arrested for any crime
4 specified in Section 290 of the Penal Code, for violating Section
5 245 or 273.5, subdivision (b) of Section 273a or, prior to January
6 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
7 any crime for which the department cannot grant an exemption if
8 the person was convicted and the 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) The following shall apply to the criminal record
13 information:

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

19 (B) If the State Department of Social Services finds that the
20 applicant, or any other person specified in subdivision (b) is
21 awaiting trial for a crime other than a minor traffic violation, the
22 State Department of Social Services may cease processing the
23 application until the conclusion of the trial.

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

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

32 (E) An applicant and any other person specified in subdivision
33 (b) shall submit to the Department of Justice a second set of
34 fingerprints for the purpose of searching the records of the Federal
35 Bureau of Investigation, in addition to the search required by this
36 subdivision. If an applicant meets all other conditions for
37 licensure, except receipt of the Federal Bureau of Investigation's
38 criminal history information for the applicant and persons listed in
39 subdivision (b), the department may issue a license if the applicant
40 and each person described by subdivision (b) has signed and



1 submitted a statement that he or she has never been convicted of
2 a crime in the United States, other than a traffic infraction as
3 defined in paragraph (1) of subdivision (a) of Section 42001 of the
4 Vehicle Code. If, after licensure, the department determines that
5 the licensee or person specified in subdivision (b) has a criminal
6 record, the license may be revoked pursuant to subdivision (a) of
7 Section 1568.082. The department may also suspend the license
8 pending an administrative hearing pursuant to subdivision (b) of
9 Section 1568.082.

10 (b) In addition to the applicant, the provisions of this section
11 shall be applicable to criminal convictions of the following
12 persons:

13 (1) Adults responsible for administration or direct supervision
14 of staff of the facility.

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

16 (3) Any person who provides resident assistance in dressing,
17 grooming, bathing, or personal hygiene. Any nurse assistant or
18 home health aide meeting the requirements of Section 1338.5 or
19 1736.6, respectively, who is not employed, retained, or contracted
20 by the licensee, and who has been certified or recertified on or after
21 July 1, 1998, shall be deemed to meet the criminal record clearance
22 requirements of this section. A certified nurse assistant and
23 certified home health aide who will be providing client assistance
24 and who falls under this exemption shall provide one copy of his
25 or her current certification, prior to providing care, to the
26 residential care facility for persons with chronic, life-threatening
27 illness. The facility shall maintain the copy of the certification on
28 file as long as care is being provided by the certified nurse assistant
29 or certified home health aide at the facility. Nothing in this
30 paragraph restricts the right of the department to exclude a
31 certified nurse assistant or certified home health aide from a
32 licensed residential care facility for persons with chronic,
33 life-threatening illness pursuant to Section 1568.092.

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

36 (B) A volunteer shall be exempt from the requirements of this
37 subdivision if he or she is a relative, significant other, or close
38 friend of a client receiving care in the facility and the volunteer
39 does not provide direct care and supervision of residents. A
40 volunteer who provides direct care and supervision shall be



1 exempt if the volunteer is a resident's spouse, significant other,
2 close friend, or family member and provides direct care and
3 supervision to that resident only at the request of the resident. The
4 department may define in regulations persons similar to those
5 described in this subparagraph who may be exempt from the
6 requirements of this subdivision.

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

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

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 residential care facility, be fingerprinted and sign a declaration
20 under penalty of perjury regarding any prior criminal convictions.
21 The 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 (g), prior to the person's
25 employment, residence, or initial presence in the residential 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 (g), 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 1568.082. The State
2 Department of Social Services may assess civil penalties for
3 continued violations as allowed in Section 1568.0822. The
4 fingerprints shall then be submitted to the State Department of
5 Social Services for processing. The licensee shall maintain and
6 make available for inspection documentation of the individual's
7 clearance or exemption.

8 (2) A violation of the regulations adopted pursuant to Section
9 1522.04 shall result in the citation of a deficiency and an
10 immediate assessment of civil penalties in the amount of one
11 hundred dollars (\$100) per violation per day for a maximum of
12 five days, unless the violation is a second or subsequent violation
13 within a 12-month period in which case the civil penalties shall be
14 in the amount of one hundred dollars (\$100) per violation for a
15 maximum of 30 days, and shall be grounds for disciplining the
16 licensee pursuant to Section 1568.082. The department may assess
17 civil penalties for continued violations as permitted by Section
18 1568.0822.

19 (3) Within 14 calendar days of the receipt of the fingerprints,
20 the Department of Justice shall notify the State Department of
21 Social Services of the criminal record information, as provided for
22 in this subdivision. If no criminal record information has been
23 recorded, the Department of Justice shall provide the licensee and
24 the State Department of Social Services with a statement of that
25 fact within 14 calendar days of receipt of the fingerprints. If new
26 fingerprints are required for processing, the Department of Justice
27 shall, within 14 calendar days from the date of receipt of the
28 fingerprints, notify the licensee that the fingerprints were illegible.
29 When live-scan technology is operational, as defined in Section
30 1522.04, the Department of Justice shall notify the department, as
31 required by that section, and shall notify the licensee by mail
32 within 14 days of electronic transmission of the fingerprints to the
33 Department of Justice, if the person has no criminal history record.

34 (4) 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 State Department of
38 Social Services, on the basis of the fingerprints submitted to the
39 Department of Justice, that the person has been convicted of a sex
40 offense against a minor, an offense specified in Section 243.4,



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

25 (5) 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 (6) Concurrently with notifying the licensee pursuant to
33 paragraph (4), 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 (4).

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 the sentence, notwithstanding a subsequent order
7 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
8 permitting that person to withdraw his or her plea of guilty and to
9 enter a plea of not guilty, setting aside the verdict of guilty, or
10 dismissing the accusation, information, or indictment. For
11 purposes of this chapter, the record of a conviction, or a copy
12 thereof certified by the clerk of the court or by a judge of the court
13 in which the conviction occurred, shall be conclusive evidence of
14 the conviction. For purposes of this section or any other provision
15 of this chapter, the arrest disposition report certified by the
16 Department of Justice, or documents admissible in a criminal
17 action pursuant to Section 969b of the Penal Code, shall be prima
18 facie evidence of the conviction, notwithstanding any other
19 provision of law prohibiting the admission of these documents in
20 a civil or administrative action.

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

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

38 (f) (1) After review of the record, the director may grant an
39 exemption from disqualification for a license as specified in
40 paragraphs (1) and (4) of subdivision (a), or for employment,



1 residence, or presence in a residential care facility as specified in
2 paragraphs (4), (5), and (6) of subdivision (c) if the director has
3 substantial and convincing evidence to support a reasonable belief
4 that the applicant and the person convicted of the crime, if other
5 than the applicant, are of such good character as to justify issuance
6 of the license or special permit or granting an exemption for
7 purposes of subdivision (c). However, an exemption may not be
8 granted pursuant to this subdivision if the conviction was for any
9 of the following offenses:

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

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

20 (2) The department may not prohibit a person from being
21 employed or having contact with clients in a facility on the basis
22 of a denied criminal record exemption request or arrest
23 information unless the department complies with the requirements
24 of Section 1568.092.

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

39 (2) The State Department of Social Services shall hold criminal
40 record clearances in its active files for a minimum of two years



1 after an employee is no longer employed at a licensed facility in
2 order for the criminal record clearance to be transferred.

3 (h) If a licensee or facility is required by law to deny
4 employment or to terminate employment of any employee based
5 on written notification from the state department that the employee
6 has a prior criminal conviction or is determined unsuitable for
7 employment under Section 1568.092, the licensee or facility shall
8 not incur civil liability or unemployment insurance liability as a
9 result of that denial or termination.

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

14 (2) Paragraph (1) shall cease to be implemented when the
15 department adopts emergency regulations pursuant to Section
16 1522.04, and shall become inoperative when permanent
17 regulations are adopted under that section.

18 (j) Amendments to the provisions of this section made in the
19 1998 calendar year shall be implemented commencing 60 days
20 after the effective date of the act amending this section in the 1998
21 calendar year, except those provisions for the submission of
22 fingerprints for searching the records of the Federal Bureau of
23 Investigation, which shall be implemented commencing January
24 1, 1999.

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

27 1569.17. The Legislature recognizes the need to generate
28 timely and accurate positive fingerprint identification of
29 applicants as a condition of issuing licenses, permits, or
30 certificates of approval for persons to operate or provide direct
31 care services in a residential care facility for the elderly. The
32 Legislature supports the use of the fingerprint live-scan
33 technology, as identified in the long-range plan of the Department
34 of Justice for fully automating the processing of fingerprints and
35 other data by the year 1999. It is the intent of the Legislature in
36 enacting this section to require the fingerprints of those individuals
37 whose contact with clients of residential care facilities for the
38 elderly may pose a risk to the clients' health and safety.

39 (a) (1) Before issuing a license to any person or persons to
40 operate or manage a residential care facility for the elderly, the



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

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

14 (3) The following shall apply to the criminal record
15 information:

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

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

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

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

34 (E) An applicant and any other person specified in subdivision
35 (b) shall submit a second set of fingerprints to the Department of
36 Justice, for the purpose of searching the records of the Federal
37 Bureau of Investigation, in addition to the search required by
38 subdivision (a). If an applicant meets all other conditions for
39 licensure, except receipt of the Federal Bureau of Investigation's
40 criminal history information for the applicant and persons listed in



1 subdivision (b), the department may issue a license if the applicant
2 and each person described by subdivision (b) has signed and
3 submitted a statement that he or she has never been convicted of
4 a crime in the United States, other than a traffic infraction as
5 defined in paragraph (1) of subdivision (a) of Section 42001 of the
6 Vehicle Code. If, after licensure, the department determines that
7 the licensee or person specified in subdivision (b) has a criminal
8 record, the license may be revoked pursuant to Section 1569.50.
9 The department may also suspend the license pending an
10 administrative hearing pursuant to Sections 1569.50 and 1569.51.

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

13 (1) (A) Adults responsible for administration or direct
14 supervision of staff.

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

20 (C) Any person who provides client assistance in dressing,
21 grooming, bathing, or personal hygiene. Any nurse assistant or
22 home health aide meeting the requirements of Section 1338.5 or
23 1736.6, respectively, who is not employed, retained, or contracted
24 by the licensee, and who has been certified or recertified on or after
25 July 1, 1998, shall be deemed to meet the criminal record clearance
26 requirements of this section. A certified nurse assistant and
27 certified home health aide who will be providing client assistance
28 and who falls under this exemption shall provide one copy of his
29 or her current certification, prior to providing care, to the
30 residential care facility for the elderly. The facility shall maintain
31 the copy of the certification on file as long as the care is being
32 provided by the certified nurse assistant or certified home health
33 aide at the facility. Nothing in this paragraph restricts the right of
34 the department to exclude a certified nurse assistant or certified
35 home health aide from a licensed residential care facility for the
36 elderly pursuant to Section 1569.58.

37 (D) Any staff person, volunteer, or employee who has contact
38 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 a similar 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 requirements
11 applicable under paragraph (1):

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

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

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

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

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

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

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

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

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

30 (E) Licensed or certified medical professionals are exempt
31 from fingerprint and criminal background check requirements
32 imposed by community care licensing. This exemption does not
33 apply to a person who is a community care facility licensee or an
34 employee of the facility.

35 (F) Employees of licensed home health agencies and members
36 of licensed hospice interdisciplinary teams who have contact with
37 a resident of a residential care facility at the request of the resident
38 or resident's legal decisionmaker are exempt from fingerprint and
39 criminal background check requirements imposed by community



1 care licensing. This exemption does not apply to a person who is
2 a community care facility licensee or an employee of the facility.

3 (G) Clergy and other spiritual caregivers who are performing
4 services in common areas of the residential care facility, or who are
5 advising an individual resident at the request of, or with
6 permission of, the resident, 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 (H) Any person similar to those described in this subdivision,
11 as defined by the department in regulations.

12 (I) Nothing in this paragraph shall prevent a licensee from
13 requiring a criminal record clearance of any individual exempt
14 from the requirements of this section, provided that the individual
15 has client contact.

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

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



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

22 (2) Within 14 calendar days of the receipt of the fingerprints,
23 the Department of Justice shall notify the State Department of
24 Social Services of the criminal record information, as provided for
25 in this subdivision. If no criminal record information has been
26 recorded, the Department of Justice shall provide the licensee and
27 the State Department of Social Services with a statement of that
28 fact within 14 calendar days of receipt of the fingerprints. If new
29 fingerprints are required for processing, the Department of Justice
30 shall, within 14 calendar days from the date of receipt of the
31 fingerprints, notify the licensee that the fingerprints were illegible.

32 (3) Except for persons specified in paragraph (2) of subdivision
33 (b), the licensee shall endeavor to ascertain the previous
34 employment history of persons required to be fingerprinted under
35 this subdivision. If the State Department of Social Services
36 determines, on the basis of the fingerprints submitted to the
37 Department of Justice, that the person has been convicted of a sex
38 offense against a minor, an offense specified in Section 243.4,
39 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
40 Department of Social Services shall notify the licensee in writing



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

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

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



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

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

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



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

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

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

23 (2) The director shall notify in writing the licensee or the
24 applicant of his or her decision within 60 days of receipt of all
25 information from the applicant and other sources determined
26 necessary by the director for the rendering of a decision pursuant
27 to this subdivision.

28 (3) The department may not prohibit a person from being
29 employed or having contact with clients in a facility on the basis
30 of a denied criminal record exemption request or arrest
31 information unless the department complies with the requirements
32 of Section 1569.58.

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



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

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

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 department that the employee has
15 a prior criminal conviction or is determined unsuitable for
16 employment under Section 1569.58, 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) Amendments to the provisions of this section made in the
20 1998 calendar year shall be implemented commencing 60 days
21 after the effective date of the act amending this section in the 1998
22 calendar year, except those provisions for the submission of
23 fingerprints for searching the records of the Federal Bureau of
24 Investigation, which shall be implemented commencing on
25 January 1, 1999.

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

28 1596.871. The Legislature recognizes the need to generate
29 timely and accurate positive fingerprint identification of
30 applicants as a condition of issuing licenses, permits, or
31 certificates of approval for persons to operate or provide direct
32 care services in a child care center or family child care home.
33 Therefore, the Legislature supports the use of the fingerprint
34 live-scan technology, as defined in the long-range plan of the
35 Department of Justice for fully automating the processing of
36 fingerprints and other data by the year 1999, otherwise known as
37 the California Crime Information Intelligence System (CAL-CII),
38 to be used for applicant fingerprints. It is the intent of the
39 Legislature in enacting this section to require the fingerprints of



1 those individuals whose contact with child day care facility clients
2 may pose a risk to the children's health and safety.

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

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

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

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

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

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

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

37 (D) If the State Department of Social Services finds after
38 licensure that the licensee, or any other person specified in
39 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 1596.885.
18 The department may also suspend the license pending an
19 administrative hearing pursuant to Section 1596.886.

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

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

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

25 (C) Any person who provides care and supervision to the
26 children.

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

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

35 (ii) A student enrolled or participating at an accredited
36 educational institution shall be exempt from the requirements of
37 this subdivision if the student is directly supervised by the licensee
38 or a facility employee with a criminal record clearance or
39 exemption, the facility has an agreement with the educational
40 institution concerning the placement of the student, the student



1 spends no more than 16 hours per week at the facility, and the
2 student is not left alone with children in care.

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

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

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

11 (E) If the applicant is a firm, partnership, association, or
12 corporation, the chief executive officer, other person serving in
13 like capacity, or a person designated by the chief executive officer
14 as responsible for the operation of the facility, as designated by the
15 applicant agency.

16 (F) If the applicant is a local educational agency, the president
17 of the governing board, the school district superintendent, or a
18 person designated to administer the operation of the facility, as
19 designated by the local educational agency.

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

26 (H) This section does not apply to employees of child care and
27 development programs under contract with the State Department
28 of Education who have completed a criminal records clearance as
29 part of an application to the Commission on Teacher
30 Credentialing, and who possess a current credential or permit
31 issued by the commission, including employees of child care and
32 development programs that serve both children subsidized under,
33 and children not subsidized under, a State Department of
34 Education contract. The Commission on Teacher Credentialing
35 shall notify the department upon revocation of a current credential
36 or permit issued to an employee of a child care and development
37 program under contract with the State Department of Education.

38 (I) This section does not apply to employees of a child care and
39 development program operated by a school district, county office
40 of education, or community college district under contract with the



1 State Department of Education who have completed a criminal
2 record clearance as a condition of employment. The school
3 district, county office of education, or community college district
4 upon receiving information that the status of an employee's
5 criminal record clearance has changed shall submit that
6 information to the department.

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

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

21 (B) These fingerprints shall be on a card provided by the State
22 Department of Social Services for the purpose of obtaining a
23 permanent set of fingerprints and submitted to the Department of
24 Justice by the licensee or sent by electronic transmission in a
25 manner approved by the State Department of Social Services. A
26 licensee's failure to submit fingerprints to the Department of
27 Justice, or to comply with paragraph (1) of subdivision (h), as
28 required in this section, shall result in the citation of a deficiency,
29 and an immediate assessment of civil penalties in the amount of
30 one hundred dollars (\$100) per violation, per day for a maximum
31 of five days, unless the violation is a second or subsequent
32 violation within a 12-month period in which case the civil
33 penalties shall be in the amount of one hundred dollars (\$100) per
34 violation for a maximum of 30 days, and shall be grounds for
35 disciplining the licensee pursuant to Section 1596.885 or Section
36 1596.886. The State Department of Social Services may assess
37 civil penalties for continued violations permitted by Sections
38 1596.99 and 1597.62. The fingerprints shall then be submitted to
39 the State Department of Social Services for processing. Within 14
40 calendar days of the receipt of the fingerprints, the Department of



1 Justice shall notify the State Department of Social Services of the
2 criminal record information, as provided in this subdivision. If no
3 criminal record information has been recorded, the Department of
4 Justice shall provide the licensee and the State Department of
5 Social Services with a statement of that fact within 14 calendar
6 days of receipt of the fingerprints. If new fingerprints are required
7 for processing, the Department of Justice shall, within 14 calendar
8 days from the date of receipt of the fingerprints, notify the licensee
9 that the fingerprints were illegible.

10 (C) Documentation of the individual's clearance or exemption
11 shall be maintained by the licensee, and shall be available for
12 inspection. When live-scan technology is operational, as defined
13 in Section 1522.04, the Department of Justice shall notify the
14 department, as required by that section, and notify the licensee by
15 mail within 14 days of electronic transmission of the fingerprints
16 to the Department of Justice, if the person has no criminal record.
17 Any 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 1596.885 or Section 1596.886. The
26 department may assess civil penalties for continued violations, as
27 permitted by Sections 1596.99 and 1597.62.

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



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

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

26 (4) Concurrently with notifying the licensee pursuant to
27 paragraph (3), the department shall notify the affected individual
28 of his or her right to seek an exemption pursuant to subdivision (f).
29 The individual may seek an exemption only if the licensee
30 terminates the person's employment or removes the person from
31 the facility after receiving notice from the department pursuant to
32 paragraph (3).

33 (d) (1) For purposes of this section or any other provision of
34 this chapter, a conviction means a plea or verdict of guilty or a
35 conviction following a plea of nolo contendere. Any action that the
36 department is permitted to take following the establishment of a
37 conviction may be taken when the time for appeal has elapsed,
38 when the judgment of conviction has been affirmed on appeal, or
39 when an order granting probation is made suspending the
40 imposition of sentence, notwithstanding a subsequent order



1 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
2 permitting the person to withdraw his or her plea of guilty and to
3 enter a plea of not guilty, or setting aside the verdict of guilty, or
4 dismissing the accusation, information, or indictment. For
5 purposes of this section or any other provision of this chapter, the
6 record of a conviction, or a copy thereof certified by the clerk of
7 the court or by a judge of the court in which the conviction
8 occurred, shall be conclusive evidence of the conviction. For
9 purposes of this section or any other provision of this chapter, the
10 arrest disposition report certified by the Department of Justice, or
11 documents admissible in a criminal action pursuant to Section
12 969b of the Penal Code, shall be prima facie evidence of
13 conviction, notwithstanding any other provision of law
14 prohibiting the admission of these documents in a civil or
15 administrative action.

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

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

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



1 justify issuance of the license or special permit or granting an
2 exemption for purposes of subdivision (c). However, an
3 exemption may not be granted pursuant to this subdivision if the
4 conviction was for any of the following offenses:

5 (A) An offense specified in Section 220, 243.4, or 264.1,
6 subdivision (a) of Section 273a or, prior to January 1, 1994,
7 paragraph (1) of Section 273a, Section 273d, 288, or 289,
8 subdivision (a) of Section 290, or Section 368 of the Penal Code,
9 or was a conviction of another crime against an individual
10 specified in subdivision (c) of Section 667.5 of the Penal Code.

11 (B) A felony offense specified in Section 729 of the Business
12 and Professions Code or Section 206 or 215, subdivision (a) of
13 Section 347, subdivision (b) of Section 417, or subdivision (a) or
14 (b) of Section 451 of the Penal Code.

15 (2) The department may not prohibit a person from being
16 employed or having contact with clients in a facility on the basis
17 of a denied criminal record exemption request or arrest
18 information unless the department complies with the requirements
19 of Section 1596.8897.

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

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

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



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

4 (A) A county office with department delegated licensing
5 authority may accept a clearance or exemption from the
6 department.

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

9 (C) A county office with department delegated licensing
10 authority may accept a clearance or exemption from any other
11 county office with department delegated licensing authority.

12 (4) With respect to notifications issued by the Department of
13 Justice pursuant to Section 11105.2 of the Penal Code concerning
14 an individual whose criminal record clearance was originally
15 processed by the department or a county office with department
16 delegated licensing authority, all of the following shall apply:

17 (A) The Department of Justice shall process a request from the
18 department or a county office with department delegated licensing
19 authority to receive the notice ~~in substitution of, or in addition to,~~
20 ~~the original recipient of the notice,~~ *only* if all of the following
21 conditions are met:

22 (i) The request shall be submitted to the Department of Justice
23 by the agency to be substituted ~~or added to the notification process~~
24 *to receive the notification.*

25 (ii) The request shall be for the same applicant type as the type
26 for which the original clearance was obtained.

27 ~~(iii) The Department of Justice shall provide a notification that~~
28 ~~includes~~

29 *(iii) The request shall contain all* prescribed data elements and
30 format protocols pursuant to a written agreement between the
31 department and the Department of Justice.

32 (B) (i) On or before January 7, 2005, the department shall
33 notify the Department of Justice of all county offices that have
34 department delegated licensing authority.

35 (ii) The department shall notify the Department of Justice
36 within 15 calendar days of the date on which a new county office
37 receives department delegated licensing authority or a county's
38 delegated licensing authority is rescinded.

39 (C) The Department of Justice shall charge the department or
40 a county office with department delegated licensing authority a fee



1 for each time a request to ~~modify~~ *substitute* the recipient agency
2 is received for purposes of this paragraph. This fee shall not
3 exceed the cost of providing the service.

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

