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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, and declaring the urgency thereof, to take effect immediately.

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 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.

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

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

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

1 SECTION 1. Section 1522 of the Health and Safety Code, as
2 amended by Chapter 229 of the Statutes of 2004, is amended to
3 read:

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

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



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

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

13 (3) Except during the 2003–04 ~~year~~ and 2004–05 fiscal years,
14 neither the Department of Justice nor the State Department of
15 Social Services may charge a fee for the fingerprinting of an
16 applicant for a license or special permit to operate a facility
17 providing nonmedical board, room, and care for six or less
18 children or for obtaining a criminal record of the applicant
19 pursuant to this section.

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

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

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

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

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



1 (E) An applicant and any other person specified in subdivision
2 (b) shall submit a second set of fingerprints to the Department of
3 Justice for the purpose of searching the criminal records of the
4 Federal Bureau of Investigation, in addition to the criminal records
5 search required by this subdivision. If an applicant and all other
6 persons described in subdivision (b) meet all of the conditions for
7 licensure, except receipt of the Federal Bureau of Investigation's
8 criminal history information for the applicant or any of the persons
9 described in subdivision (b), the department may issue a license if
10 the applicant and each person described in subdivision (b) has
11 signed and submitted a statement that he or she has never been
12 convicted of a crime in the United States, other than a traffic
13 infraction, as defined in paragraph (1) of subdivision (a) of Section
14 42001 of the Vehicle Code. If, after licensure, the department
15 determines that the licensee or any other person specified in
16 subdivision (b) has a criminal record, the license may be revoked
17 pursuant to Section 1550. The department may also suspend the
18 license pending an administrative hearing pursuant to Section
19 1550.5.

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 client, residing in the facility.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 (D) Clergy and other spiritual caregivers who are performing
2 services in common areas of the community care facility or who
3 are advising an individual client at the request of, or with the
4 permission of, the client or legal decisionmaker, are exempt from
5 fingerprint and criminal background check requirements imposed
6 by community care licensing. This exemption does not apply to a
7 person who is a community care licensee or employee of the
8 facility.

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

- 11 (i) Members are not left alone with clients.
- 12 (ii) Members do not transport clients off the facility premises.
- 13 (iii) The same organization does not conduct group activities
14 for clients more often than defined by the department's
15 regulations.

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

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

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

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

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

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

- 38 (i) The volunteer is supervised by the licensee or a facility
39 employee with a criminal record clearance or exemption.
- 40 (ii) The volunteer is never left alone with clients.



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

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

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

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

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



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

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



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

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

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



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

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

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

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

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

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

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

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

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



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

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

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



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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

19 (iii) The request shall contain all prescribed data elements and
20 format protocols pursuant to a written agreement between the
21 department and the Department of Justice.

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

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

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

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

37 (j) If a licensee or facility is required by law to deny
38 employment or to terminate employment of any employee based
39 on written notification from the state department that the employee
40 has a prior criminal conviction or is determined unsuitable for



1 employment under Section 1558, the licensee or facility shall not
2 incur civil liability or unemployment insurance liability as a result
3 of that denial or termination.

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

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

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

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

31 1568.09. It is the intent of the Legislature in enacting this
32 section to require the fingerprints of those individuals whose
33 contact with residents of residential care facilities for persons with
34 a chronic, life-threatening illness may pose a risk to the residents'
35 health and safety.

36 Therefore, the Legislature supports the use of the fingerprint
37 live-scan technology, as identified in the long-range plan of the
38 Department of Justice for fully automating the processing of
39 fingerprints and other data by the year 1999, otherwise known as
40 the California Crime Information Intelligence System (CAL-CII),



1 to be used for applicant fingerprints. It is the intent of the
2 Legislature, in enacting this section, to require the fingerprints of
3 those individuals whose contact with community care clients may
4 pose a risk to the clients' health and safety.

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

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

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

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

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

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

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

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



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

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

20 (1) Adults responsible for administration or direct supervision
21 of staff of the facility.

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

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



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

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

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

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

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

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



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

15 (2) A violation of the regulations adopted pursuant to Section
16 1522.04 shall result in the citation of a deficiency and an
17 immediate assessment of civil penalties in the amount of one
18 hundred dollars (\$100) per violation per day for a maximum of
19 five days, unless the violation is a second or subsequent violation
20 within a 12-month period in which case the civil penalties shall be
21 in the amount of one hundred dollars (\$100) per violation for a
22 maximum of 30 days, and shall be grounds for disciplining the
23 licensee pursuant to Section 1568.082. The department may assess
24 civil penalties for continued violations as permitted by Section
25 1568.0822.

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



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

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

39 (6) Concurrently with notifying the licensee pursuant to
40 paragraph (4), the department shall notify the affected individual



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

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

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

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



1 from any law enforcement agency as necessary to the performance
2 of its duties to inspect, license, and investigate community care
3 facilities and individuals associated with a community care
4 facility.

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

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

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

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

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



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

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

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

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

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

25 (j) Amendments to the provisions of this section made in the
26 1998 calendar year shall be implemented commencing 60 days
27 after the effective date of the act amending this section in the 1998
28 calendar year, except those provisions for the submission of
29 fingerprints for searching the records of the Federal Bureau of
30 Investigation, which shall be implemented commencing January
31 1, 1999.

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

34 1569.17. The Legislature recognizes the need to generate
35 timely and accurate positive fingerprint identification of
36 applicants as a condition of issuing licenses, permits, or
37 certificates of approval for persons to operate or provide direct
38 care services in a residential care facility for the elderly. The
39 Legislature supports the use of the fingerprint live-scan
40 technology, as identified in the long-range plan of the Department



1 of Justice for fully automating the processing of fingerprints and
2 other data by the year 1999. It is the intent of the Legislature in
3 enacting this section to require the fingerprints of those individuals
4 whose contact with clients of residential care facilities for the
5 elderly may pose a risk to the clients' health and safety.

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

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

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

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

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

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

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



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

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

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

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

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



1 the department to exclude a certified nurse assistant or certified
2 home health aide from a licensed residential care facility for the
3 elderly pursuant to Section 1569.58.

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

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

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

15 (2) The following persons are exempt from requirements
16 applicable under paragraph (1):

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

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

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

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

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

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

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

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

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

35 (E) Licensed or certified medical professionals are exempt
36 from fingerprint and criminal background check requirements
37 imposed by community care licensing. This exemption does not
38 apply to a person who is a community care facility licensee or an
39 employee of the facility.



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

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

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

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

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

32 (B) These fingerprints shall be on a fingerprint card provided
33 by the State Department of Social Services, or sent by electronic
34 transmission in a manner approved by the State Department of
35 Social Services and the Department of Justice and submitted to the
36 Department of Justice by the licensee. A licensee's failure to
37 submit fingerprints to the Department of Justice, or to comply with
38 paragraph (1) of subdivision (g), as required in this section, shall
39 result in the citation of a deficiency and an immediate assessment
40 of civil penalties in the amount of one hundred dollars (\$100) per



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

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

37 (3) Except for persons specified in paragraph (2) of subdivision
38 (b), the licensee shall endeavor to ascertain the previous
39 employment history of persons required to be fingerprinted under
40 this subdivision. If the State Department of Social Services



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

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

39 (5) Concurrently with notifying the licensee pursuant to
40 paragraph (4), the department shall notify the affected individual



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

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

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

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



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

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

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

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

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

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

38 (g) (1) For purposes of compliance with this section, the
39 department may permit an individual to transfer a current criminal
40 record clearance, as defined in subdivision (a), from one facility



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

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

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

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

31 SEC. 4. Section 1596.871 of the Health and Safety Code, as
32 amended by Chapter 229 of the Statutes of 2004, is amended to
33 read:

34 1596.871. The Legislature recognizes the need to generate
35 timely and accurate positive fingerprint identification of
36 applicants as a condition of issuing licenses, permits, or
37 certificates of approval for persons to operate or provide direct
38 care services in a child care center or family child care home.
39 Therefore, the Legislature supports the use of the fingerprint
40 live-scan technology, as defined in the long-range plan of the



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

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

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

22 (3) Except during the 2003–04 fiscal year ~~and 2004–05 fiscal~~
23 ~~years~~, neither the Department of Justice nor the department may
24 charge a fee for the fingerprinting of an applicant who will serve
25 six or fewer children or any family day care applicant for a license,
26 or for obtaining a criminal record of an applicant pursuant to this
27 section.

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

27 (i) The request shall be submitted to the Department of Justice
28 by the agency to be substituted to receive the notification.

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

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

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

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



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

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

12 SEC. 5. This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety
14 within the meaning of Article IV of the Constitution and shall go
15 into immediate effect. The facts constituting the necessity are:

16 California's most vulnerable populations in community care
17 and child day care facilities are exposed to persons who may pose
18 an immediate risk to their health and safety because licensees
19 currently face only minimal civil penalties for violations and are
20 therefore undeterred from permitting persons who do not have
21 criminal record clearances or exemptions from being present in
22 their facilities. Thus, to reduce these risks as soon as possible by
23 enhancing civil penalties, it is necessary that this act take effect
24 immediately.

