



General Assembly

January Session, 2001

Amendment

LCO No. 7948

Offered by:

SEN. PRAGUE, 19th Dist.
SEN. GUGLIELMO, 35th Dist.
SEN. HARP, 10th Dist.
SEN. CRISCO, 17th Dist.
SEN. HANDLEY, 4th Dist.
SEN. CIOTTO, 9th Dist.

SEN. PETERS, 20th Dist.
SEN. KISSEL, 7th Dist.
SEN. SOMMA, 16th Dist.
SEN. HARTLEY, 15th Dist.
SEN. NICKERSON, 36th Dist.
SEN. COOK, 18th Dist.

To: Subst. Senate Bill No. 1437

File No. 586

Cal. No. 382

"AN ACT CONCERNING STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECKS."

1 After line 808, insert the following and renumber the remaining
2 section accordingly:

3 "Sec. 30. (NEW) (a) As used in this section:

4 (1) "Applicant" means an individual who seeks and is offered
5 employment or contractual service as a caregiver or an administrator
6 with a care provider, including, but not limited to, an individual who
7 is employed with a care provider through a temporary employment
8 agency;

9 (2) "Caregiver" means an individual whose employment or
10 contractual service with a care provider includes physical access to any

11 care recipient served by the provider or access to the finances of such
12 care recipient;

13 (3) "Care provider" or "provider" means a nursing home or home
14 health care agency;

15 (4) "Care recipient" means an individual under the care of a
16 provider if the individual has a physical or mental illness, injury or
17 disability or suffers from any cognitive impairment that restricts or
18 limits the individual's activities;

19 (5) "Nation-wide criminal history screening" means a criminal
20 history background investigation of an applicant through the use of
21 fingerprints collected by the Department of Public Safety and
22 submitted to the Federal Bureau of Investigation, resulting in
23 generation of a nation-wide criminal history record for that applicant;

24 (6) "Nation-wide criminal history record" means information
25 concerning an individual's arrests, indictments or other formal
26 criminal charges, and any dispositions arising therefrom, including,
27 but not necessarily limited to, convictions, dismissals, acquittals,
28 sentencing and correctional supervision, collected by criminal justice
29 agencies and stored in the computerized databases of the Federal
30 Bureau of Investigation, the National Law Enforcement
31 Telecommunications System, the Department of Public Safety or the
32 repositories of criminal history information of other states; and

33 (7) "Department" means the Department of Public Health.

34 (b) The Department of Public Health may review an applicant's
35 nation-wide criminal history record obtained by the Department of
36 Public Safety as a result of a nation-wide criminal history screening
37 pursuant to an applicant's authorization for such criminal history
38 screening. Upon a provider's request, the Department of Public Safety,
39 or its designee, shall take a set of fingerprints for a nation-wide
40 criminal history screening. The Department of Public Safety shall
41 retain the fingerprints for the purpose of conducting a nation-wide

42 criminal history screening.

43 (c) On and after October 1, 2001, no care provider may hire an
44 applicant unless the applicant has submitted to a request for a nation-
45 wide criminal history screening prior to beginning employment in
46 accordance with this section, or unless the applicant has submitted to a
47 nation-wide criminal history screening pursuant to this section within
48 the previous twelve months and does not have a criminal record.

49 (d) Except as provided in subsection (f) of this section, the
50 Department of Public Health may disqualify an applicant from being
51 hired by a care provider who (1) the department finds is not fit for
52 employment as a caregiver or administrator or who presents a risk of
53 harm to a care recipient, and (2) within the three years prior to the date
54 the Department of Public Health receives the results of the nation-wide
55 criminal history record for the applicant pursuant to subsection (e) of
56 this section, has been convicted, incarcerated or on probation in this
57 state for any of the following offenses, or in any other state for an
58 offense substantially similar to any of the following offenses: (A)
59 Cruelty to persons under section 53-20 of the general statutes; (B)
60 assault of a victim sixty or older under section 53a-59a, 53a-60b or 53a-
61 60c of the general statutes; (C) sexual assault under any provision of
62 sections 53a-70 to 53a-73a, inclusive, of the general statutes; (D) larceny
63 under any provision of sections 53a-122 to 53a-125b, inclusive, of the
64 general statutes; (E) burglary under any provision of sections 53a-101
65 to 53a-103a, inclusive, of the general statutes; or (F) robbery under any
66 provision of sections 53a-134 to 53a-136a, inclusive, of the general
67 statutes.

68 (e) Upon receipt by the Department of Public Health of the results of
69 the applicant's nation-wide criminal history record, the Department of
70 Public Health shall give notice to such care provider of whether the
71 Department of Public Health has disqualified the applicant pursuant to
72 subsection (d) of this section. No other results of the applicant's
73 criminal history screening may be provided to the care provider.
74 Except as provided in subsection (f) of this section, a care provider

75 may not employ an applicant who has been disqualified by the
76 Department of Public Health. When the Department of Public Health
77 provides notice to the care provider of such disqualification, the
78 department shall also notify the applicant of the specific convictions on
79 which its decision is based.

80 (f) An applicant who is disqualified by the Department of Public
81 Health pursuant to subsection (d) of this section may request a hearing
82 by the Department of Public Health. The commissioner shall hold the
83 hearing not later than ten business days after the commissioner
84 receives such request unless the applicant requests an extension. The
85 commissioner shall grant an extension for the period of time requested
86 by the applicant. The commissioner shall issue a decision not later than
87 ten business days after the hearing. The care provider may hire the
88 applicant if the hearing or appeal therefrom results in a determination
89 that the applicant's nation-wide criminal history record inaccurately
90 reflects the disqualifying conviction of a crime specified in subsection
91 (d) of this section, or that the employment presents no risk of harm to a
92 care recipient, or that the conviction does not directly bear upon the
93 applicant's fitness for the employment.

94 (g) An applicant aggrieved by the action of the Commissioner of
95 Public Health in disqualifying the applicant pursuant to this section
96 may appeal therefrom in accordance with the provisions of section 4-
97 183 of the general statutes, except that venue for such appeal shall be
98 in the judicial district of Hartford. Appeals under this section shall be
99 privileged in respect to the order of trial assignment.

100 (h) A care provider shall maintain records evidencing compliance
101 with the provisions of this section with respect to all applicants and
102 caregivers hired on or after October 1, 2001.

103 (i) All criminal records obtained pursuant to this section by the
104 Department of Public Health and the Department of Public Safety shall
105 be confidential. No criminal history records obtained pursuant to this
106 section may be used for any purpose other than determining whether

107 an applicant has criminal records that disqualify the applicant from
108 employment as a caregiver or an administrator. Except upon the order
109 of the Superior Court or with the written consent of the applicant,
110 criminal records obtained pursuant to this section and the information
111 contained therein may not be released or otherwise disclosed to any
112 other person or agency. Criminal records obtained pursuant to this
113 section shall not be subject to disclosure under the Freedom of
114 Information Act, as defined in section 1-200 of the general statutes.
115 Any person who discloses confidential records or information in
116 violation of this section is guilty of a class D misdemeanor.

117 (j) A provider who fails to comply with the requirements of this
118 section shall be subject to a fine of not more than five hundred dollars
119 for each violation.

120 (k) The Commissioner of Public Health shall charge each provider a
121 fee for each national criminal history screening that shall be equal to
122 the fee charged by the Federal Bureau of Investigation for performing
123 such screening. The Department of Public Health shall reimburse the
124 Department of Public Safety for the actual cost for a national criminal
125 history screening.

126 (l) The Commissioner of Public Safety may adopt regulations, in
127 accordance with the provisions of chapter 54 of the general statutes, to
128 implement the provisions of this section relating to fingerprint
129 procedures, confidentiality of records within the Department of Public
130 Safety, timeframes for an applicant's nation-wide criminal history
131 screening and procedures for clarifying incomplete or confusing
132 criminal history information.

133 (m) The Commissioner of Public Health may adopt regulations, in
134 accordance with the provisions of chapter 54 of the general statutes, to
135 implement the provisions of this section, except for matters covered by
136 regulations pursuant to subsection (l) of this section. Such regulations
137 may include, but not be limited to, the establishment of a three-year
138 phased implementation based on type of provider, confidentiality of

139 records within the Department of Public Health, procedures for
140 appeals pursuant to subsection (f) of this section and employment
141 procedures pending the results of the nation-wide criminal history
142 screening relating to applicants and caregivers.

143 Sec. 31. (NEW) Not later than October 1, 2001, the Commissioner of
144 Public Health shall notify each provider, as defined in section 9 of this
145 act, of the requirements of section 9 of this act.

146 Sec. 32. (NEW) This act shall take effect from its passage, except that
147 sections 1 to 9, inclusive, shall take effect October 1, 2001."