



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code:  Section:

[Up^](#) [Add To My Favorites](#)

**HEALTH AND SAFETY CODE - HSC**

**DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70]** ( *Division 2 enacted by Stats. 1939, Ch. 60.* )

**CHAPTER 3.4. California Child Day Care Act [1596.70 - 1596.895]** ( *Chapter 3.4 added by Stats. 1984, Ch. 1615, Sec. 9.*

)

**ARTICLE 4. Suspension and Revocation [1596.885 - 1596.8895]** ( *Article 4 added by Stats. 1984, Ch. 1615, Sec. 9.* )

**1596.885.** The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

- (a) Violation by the licensee, registrant, or holder of a special permit of this act or of the rules and regulations promulgated under this act.
- (b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act.
- (c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state.
- (d) The conviction of a licensee, or other person specified in Section 1596.871, at any time before or during licensure, of a crime as defined in Section 1596.871.
- (e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

(Amended by Stats. 1998, Ch. 311, Sec. 47. Effective August 19, 1998.)

**1596.886.** The director may temporarily suspend any license, registration, or special permit prior to any hearing when, in the opinion of the director, the action is necessary to protect any child of a child day care facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee, registrant, or holder of the special permit of the temporary suspension and the effective date thereof and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, registrant, or holder of the special permit, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until such time as the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

(Amended by Stats. 1985, Ch. 1, Sec. 1. Effective December 10, 1984.)

**1596.8865.** (a) When a local child protective agency, as defined in Section 11165 of the Penal Code, has a reasonable suspicion, as defined in subdivision (a) of Section 11166 of the Penal Code, that the death or serious injury of a child occurred at a child day care facility because of abuse or willful neglect by the personnel of the child day care facility, the agency shall immediately notify the director.

(b) Within two working days of receipt of the evidence that the death or serious injury occurred at a child day care facility because of abuse or willful neglect by the personnel of the child day care facility, the department shall temporarily suspend the license, registration, or special permit of the facility, and shall immediately notify the licensee, registrant, or holder of the special permit of the temporary suspension and the effective date thereof and at the same time serve the provider with an accusation. The hearing shall be set and conducted in the manner provided in Section 1596.886, and the temporary suspension shall have the same effect and duration as provided in Section 1596.886.

(c) The director shall request that the city police, county sheriff, or other law enforcement agencies, and any other county agencies, investigating the death or serious injury of the child shall expedite and coordinate evidence gathering in the case, and, to the extent

that providing the evidence will not adversely affect any criminal prosecution, make that evidence available as soon as possible for the purposes of the hearing on the temporary suspension.

(d) As used in this section, "serious injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

*(Amended by Stats. 2006, Ch. 538, Sec. 364. Effective January 1, 2007.)*

**1596.8866.** The State Department of Social Services shall reopen an investigation into a licensed child day care facility when any person provides the department with a certified copy of a court record in which a judicial officer has determined that an injury to a child may have been inflicted while in the care and custody of a day care provider.

*(Amended by Stats. 2002, Ch. 353, Sec. 1. Effective January 1, 2003.)*

**1596.8867.** (a) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a temporary suspension of a license, in order to ensure that the facility is nonoperational, unless the department has previously verified that the facility is nonoperational.

(b) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a revocation of a license in order to ensure that the facility is nonoperational, unless the department has previously verified that the facility is nonoperational.

*(Added by Stats. 2008, Ch. 291, Sec. 20. Effective September 25, 2008.)*

**1596.887.** (a) Proceedings for the suspension, revocation, or denial of a license, registration, or special permit under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by that chapter. In the event of conflict between the provisions of this chapter and those provisions of the Government Code, the provisions of the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) If the license is not temporarily suspended pursuant to Section 1596.8865, the hearing shall be held within 90 days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

*(Amended by Stats. 1992, Ch. 1315, Sec. 27. Effective January 1, 1993.)*

**1596.8871.** (a) The administrative law judge conducting a hearing under this article may permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is developmentally disabled, to be taken outside the presence of the respondent or respondents if all of the following conditions exist:

- (1) The administrative law judge determines that taking the witness's testimony outside the presence of the respondent or respondents is necessary to ensure truthful testimony.
- (2) The witness is likely to be intimidated by the presence of the respondent or respondents.
- (3) The witness is afraid to testify in front of the respondent or respondents.

(b) If the testimony of the witness is taken outside of the presence of the respondent or respondents, the department shall provide for the use of one-way closed-circuit television so the respondent or respondents can observe the testimony of the witness. Nothing in this section shall limit a respondent's right of cross-examination.

(c) The administrative law judge conducting a hearing under this section may clear the hearing room of any persons who are not a party to the action in order to protect any witness from intimidation or other harm, taking into account the rights of all persons.

*(Added by Stats. 1994, Ch. 1267, Sec. 10. Effective January 1, 1995.)*

**1596.8872.** (a) (1) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed out-of-court statement and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

*(Added by Stats. 2002, Ch. 707, Sec. 4. Effective January 1, 2003.)*

**1596.8875.** In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

*(Amended by Stats. 1995, Ch. 938, Sec. 63. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938.)*

**1596.888.** Any license, registration, or special permit suspended pursuant to this chapter, and any special permit revoked pursuant to this chapter, may be reinstated pursuant to Section 11522 of the Government Code.

*(Added by Stats. 1984, Ch. 1615, Sec. 9.)*

**1596.889.** In all proceedings conducted in accordance with Section 1596.887, the preponderance of the evidence standard shall apply.

*(Added by Stats. 1985, Ch. 1528, Sec. 1.)*

**1596.8895.** (a) Whenever the director temporarily suspends the license, registration, or special permit of a child day care facility pursuant to Section 1596.886, the director or the local licensing agency shall send written notification to the parent or legal guardian of each child receiving services in the facility. The department or the local licensing agency, if there is one, shall also post a written notice of the temporary suspension at the facility in a place readily visible and accessible to the parents or guardians of children receiving services at the facility. Removal of the posted notice while the temporary suspension is in effect is a violation of this chapter punishable by a fine of five hundred dollars (\$500).

(b) If a temporary suspension order is not effected within 30 days of the filing of an accusation, the director or the local licensing agency shall send written notification that the accusation has been filed to the parent or legal guardian of each child receiving services in the facility.

(c) (1) Upon receipt of an accusation indicating the department's intent to revoke a facility's license, the licensee shall provide copies of a summary of the accusation to the parent or legal guardian of each child receiving services in the facility until that accusation is either dismissed or resolved through the administrative hearing process or stipulated agreement.

(2) Upon enrollment of a new child in a facility, the licensee shall provide to the parents or legal guardians of the newly enrolling child copies of a summary of any accusation that the licensee has received during the prior 12-month period that indicates the department's intent to revoke the facility's license.

(3) The licensee shall require each recipient of the summary of the accusation to sign a statement indicating that he or she has received the document and the date it was received.

(4) The licensee shall keep verification of receipt in each child's file.

(5) The department shall prepare and provide to the licensee the summary of the accusation.

*(Amended by Stats. 2006, Ch. 545, Sec. 4. Effective January 1, 2007.)*