

AMENDED IN ASSEMBLY APRIL 30, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2137

Introduced by Assembly Member Bradford

February 23, 2012

An act to amend Sections ~~1597.30, 1597.40, 1597.43, and 1597.46~~ of the ~~Health and Safety Code~~ 830.1 and 830.33 of the Penal Code, relating to ~~family day care homes~~ *peace officers*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2137, as amended, Bradford. ~~Family day care homes. Peace officers: airport law enforcement.~~

Existing law establishes categories of peace officers with varying powers and authority to make arrests and carry firearms. Existing law provides that a person who is employed as an airport law enforcement officer is a peace officer whose authority extends to any place in the state for the purpose of enforcing the law in or about the properties owned, operated, and administered by the peace officer's employing agency or when making an arrest if there is immediate danger to a person or property, or of an escape of the perpetrator of an offense. Existing law authorizes this category of peace officer to carry a firearm.

This bill would place an airport law enforcement officer regularly employed by the Los Angeles World Airports within a different category of peace officers whose authority extends to any place in the state without the above restrictions as to arrest powers and with the authority to carry specified firearms.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Los Angeles relating to law enforcement at the Los Angeles International Airport.

~~The California Child Day Care Facilities Act provides for the licensing and regulation of child day care facilities, including family day care homes, by the State Department of Social Services. The act prohibits a city, county, or city and county from prohibiting large family day care homes on lots zoned for single-family dwellings, but requires a city, county, or city and county to (1) classify large family day care homes as a permitted use of residential property for zoning purposes, (2) grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with certain local ordinances, or (3) require any large family day care home to apply for a permit to use a lot zoned for single-family dwellings.~~

~~This bill would instead authorize a city, county, or city and county to prohibit large family day care homes on lots zoned for single-family dwellings. The bill would encourage, rather than require, the 3 actions specified above. This bill also would make technical and conforming changes to these provisions, and would make associated changes with respect to legislative findings and declarations and the Legislature’s intent in enacting these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 830.1 of the Penal Code is amended to
2 read:
3 830.1. (a) ~~Any~~A sheriff, undersheriff, or deputy sheriff,
4 employed in that capacity, of a county, ~~any~~ a chief of police of a
5 city or chief, director, or chief executive officer of a consolidated
6 municipal public safety agency that performs police functions, ~~any~~
7 a police officer, employed in that capacity and appointed by the
8 chief of police or chief, director, or chief executive of a public
9 safety agency, of a city, ~~any~~ a chief of police, or police officer of
10 a district, including police officers of the San Diego Unified Port
11 District Harbor Police, authorized by statute to maintain a police
12 department, ~~any~~ a marshal or deputy marshal of a superior court
13 or county, ~~any~~ a port warden or port police officer of the Harbor
14 Department of the City of Los Angeles, a person regularly
15 employed as an airport law enforcement officer by Los Angeles
16 World Airports, or ~~any~~ an inspector or investigator employed in
17 that capacity in the office of a district attorney, is a peace officer.

1 The authority of these peace officers extends to any place in the
2 state, as follows:

3 (1) As to ~~any~~ a public offense committed or which there is
4 probable cause to believe has been committed within the political
5 subdivision that employs the peace officer or in which the peace
6 officer serves.

7 (2) Where the peace officer has the prior consent of the chief
8 of police or chief, director, or chief executive officer of a
9 consolidated municipal public safety agency, or person authorized
10 by him or her to give consent, if the place is within a city, or of
11 the sheriff, or person authorized by him or her to give consent, if
12 the place is within a county.

13 (3) As to ~~any~~ a public offense committed or which there is
14 probable cause to believe has been committed in the peace officer's
15 presence, and with respect to which there is immediate danger to
16 a person or property, or of the escape of the perpetrator of the
17 offense.

18 (b) The Attorney General and special agents and investigators
19 of the Department of Justice are peace officers, and those assistant
20 chiefs, deputy chiefs, chiefs, deputy directors, and division directors
21 designated as peace officers by the Attorney General are peace
22 officers. The authority of these peace officers extends to any place
23 in the state where a public offense has been committed or where
24 there is probable cause to believe one has been committed.

25 (c) ~~Any~~ A deputy sheriff of the County of Los Angeles, and ~~any~~
26 a deputy sheriff of the Counties of Butte, Calaveras, Colusa, Glenn,
27 Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa,
28 Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis
29 Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano,
30 Sonoma, Stanislaus, Sutter, Tehama, Tulare, and Tuolumne who
31 is employed to perform duties exclusively or initially relating to
32 custodial assignments with responsibilities for maintaining the
33 operations of county custodial facilities, including the custody,
34 care, supervision, security, movement, and transportation of
35 inmates, is a peace officer whose authority extends to any place
36 in the state only while engaged in the performance of the duties
37 of his or her respective employment and for the purpose of carrying
38 out the primary function of employment relating to his or her
39 custodial assignments, or when performing other law enforcement

1 duties directed by his or her employing agency during a local state
 2 of emergency.

3 (d) *For purposes of this chapter, “Los Angeles World Airports”*
 4 *means the department of the City of Los Angeles that owns and*
 5 *operates the Los Angeles International Airport, the Ontario*
 6 *International Airport, the Palmdale Regional Airport, and the Van*
 7 *Nuys Airport.*

8 SEC. 2. Section 830.33 of the Penal Code is amended to read:

9 830.33. The following persons are peace officers whose
 10 authority extends to any place in the state for the purpose of
 11 performing their primary duty or when making an arrest pursuant
 12 to Section 836 as to ~~any~~ a public offense with respect to which
 13 there is immediate danger to person or property, or of the escape
 14 of the perpetrator of that offense, or pursuant to Section 8597 or
 15 8598 of the Government Code. Those peace officers may carry
 16 firearms only if authorized and under terms and conditions
 17 specified by their employing agency.

18 (a) A member of the San Francisco Bay Area Rapid Transit
 19 District Police Department appointed pursuant to Section 28767.5
 20 of the Public Utilities Code, if the primary duty of the peace officer
 21 is the enforcement of the law in or about properties owned,
 22 operated, or administered by the district or when performing
 23 necessary duties with respect to patrons, employees, and properties
 24 of the district.

25 (b) Harbor or port police regularly employed and paid in that
 26 capacity by a county, city, or district other than peace officers
 27 authorized under Section 830.1, if the primary duty of the peace
 28 officer is the enforcement of the law in or about the properties
 29 owned, operated, or administered by the harbor or port or when
 30 performing necessary duties with respect to patrons, employees,
 31 and properties of the harbor or port.

32 (c) Transit police officers or peace officers of a county, city,
 33 transit development board, or district, if the primary duty of the
 34 peace officer is the enforcement of the law in or about properties
 35 owned, operated, or administered by the employing agency or
 36 when performing necessary duties with respect to patrons,
 37 employees, and properties of the employing agency.

38 (d) ~~Any~~(1) A person regularly employed as an airport law
 39 enforcement officer by a city, county, or district operating the
 40 airport or by a joint powers agency, created pursuant to Article 1

1 (commencing with Section 6500) of Chapter 5 of Division 7 of
2 Title 1 of the Government Code, operating the airport, if the
3 primary duty of the peace officer is the enforcement of the law in
4 or about properties owned, operated, and administered by the
5 employing agency or when performing necessary duties with
6 respect to patrons, employees, and properties of the employing
7 agency.

8 (2) *Notwithstanding paragraph (1), a person regularly employed*
9 *as an airport law enforcement officer by the Los Angeles World*
10 *Airports is a peace officer pursuant to the provisions of Section*
11 *830.1.*

12 (e) (1) ~~Any~~—A railroad police officer commissioned by the
13 Governor pursuant to Section 8226 of the Public Utilities Code,
14 if the primary duty of the peace officer is the enforcement of the
15 law in or about properties owned, operated, or administered by the
16 employing agency or when performing necessary duties with
17 respect to patrons, employees, and properties of the employing
18 agency.

19 (2) Notwithstanding any other provision of law, a railroad police
20 officer who has met the current requirements of the Commission
21 on Peace Officer Standards and Training necessary for exercising
22 the powers of a peace officer, and who has been commissioned by
23 the Governor as described herein, and the officer's employing
24 agency, may apply for access to information from the California
25 Law Enforcement Telecommunications System (CLETS) through
26 a local law enforcement agency that has been granted direct access
27 to CLETS, provided that, in addition to other review standards and
28 conditions of eligibility applied by the Department of Justice, the
29 CLETS Advisory Committee, and the Attorney General, before
30 access is granted, the following are satisfied:

31 (A) The employing agency shall enter into a Release of CLETS
32 Information agreement as provided for in the CLETS policies,
33 practices, and procedures, and the required background check on
34 the peace officer and other pertinent personnel has been completed,
35 together with all required training.

36 (B) The Release of CLETS Information agreement shall be in
37 substantially the same form as prescribed by the CLETS policies,
38 practices, and procedures for public agencies of law enforcement
39 who subscribe to CLETS services, and shall be subject to the
40 provisions of Chapter 2.5 (commencing with Section 15150) of

1 ~~Title 2~~ Part 6 of Division 3 of Title 2 of the Government Code and
2 the CLETS policies, practices, and procedures.

3 (C) (i) The employing agency shall expressly waive any
4 objections to jurisdiction in the courts of the State of California
5 for ~~any~~ a liability arising from use, abuse, or misuse of CLETS
6 access or services or the information derived therefrom, or with
7 respect to ~~any~~ legal actions to enforce provisions of California law
8 relating to CLETS access, services, or information under this
9 subdivision, and provided that this liability shall be in addition to
10 that imposed by ~~Section 8226 of the Public Utilities Code~~ Section
11 8226. Code.

12 (ii) The employing agency shall further agree to utilize CLETS
13 access, services, or information only for law enforcement activities
14 by peace officers who have met the current requirements of the
15 Commission on Peace Officer Standards and Training necessary
16 for exercising the powers of a peace officer, and who have been
17 commissioned as described herein who are operating within the
18 State of California, where the activities are directly related to
19 investigations or arrests arising from conduct occurring within the
20 State of California.

21 (iii) The employing agency shall further agree to pay to the
22 Department of Justice and the providing local law enforcement
23 agency all costs related to the provision of access or services,
24 including, but not limited to, any and all hardware, interface
25 modules, and costs for telephonic communications, as well as
26 administrative costs.

27 *SEC. 3. The Legislature finds and declares that a special law*
28 *is necessary and that a general law cannot be made applicable*
29 *within the meaning of Section 16 of Article IV of the California*
30 *Constitution because of the unique circumstances facing the City*
31 *of Los Angeles relating to law enforcement at the Los Angeles*
32 *International Airport.*

33 ~~SECTION 1. Section 1597.30 of the Health and Safety Code~~
34 ~~is amended to read:~~

35 ~~1597.30. The Legislature finds and declares:~~

36 ~~(a) It has a responsibility to ensure the health and safety of~~
37 ~~children in family homes that provide day care.~~

38 ~~(b) That there are insufficient numbers of regulated family day~~
39 ~~care homes in California.~~

1 ~~(e) There will be a growing need for child day care facilities~~
2 ~~due to the increase in working parents.~~

3 ~~(d) Many parents prefer child day care located in their~~
4 ~~neighborhoods in family homes. However, it is in the state's~~
5 ~~interest that this preference be balanced against the potential~~
6 ~~negative impact to the surrounding single-family neighborhood in~~
7 ~~terms of spacing and concentration, traffic control, parking, and~~
8 ~~noise control.~~

9 ~~(e) There should be a variety of child care settings, including~~
10 ~~regulated family day care homes, as suitable alternatives for~~
11 ~~parents.~~

12 ~~(f) That the program to be operated by the state should be cost~~
13 ~~effective, streamlined, and simple to administer in order to ensure~~
14 ~~adequate care for children placed in family day care homes, while~~
15 ~~not placing undue burdens on the providers.~~

16 ~~(g) That the state should maintain an efficient program of~~
17 ~~regulating family day care homes that ensures the provision of~~
18 ~~adequate protection, supervision, and guidance to children in their~~
19 ~~homes.~~

20 ~~SEC. 2. Section 1597.40 of the Health and Safety Code is~~
21 ~~amended to read:~~

22 ~~1597.40. (a) It is the intent of the Legislature that small family~~
23 ~~day care homes for children should be situated in normal residential~~
24 ~~surroundings so as to give children the home environment which~~
25 ~~is conducive to healthy and safe development. It is the public policy~~
26 ~~of this state to provide children in a small family day care home~~
27 ~~the same home environment as provided in a traditional home~~
28 ~~setting.~~

29 ~~The Legislature declares this policy to be of statewide concern~~
30 ~~with the purpose of occupying the field to the exclusion of~~
31 ~~municipal zoning, building and fire codes and regulations~~
32 ~~governing the use or occupancy of small family day care homes~~
33 ~~for children, except as specifically provided for in this chapter,~~
34 ~~and to prohibit any restrictions relating to the use of single-family~~
35 ~~residences for small family day care homes for children except as~~
36 ~~provided by this chapter.~~

37 ~~(b) Every provision in a written instrument entered into relating~~
38 ~~to real property that purports to forbid or restrict the conveyance,~~
39 ~~encumbrance, leasing, or mortgaging of the real property for use~~
40 ~~or occupancy as a family day care home for children, is void and~~

1 every restriction or prohibition in any such written instrument as
2 to the use or occupancy of the property as a family day care home
3 for children is void.

4 (e) Except as provided in subdivision (d), every restriction or
5 prohibition entered into, whether by way of covenant, condition
6 upon use or occupancy, or upon transfer of title to real property,
7 which restricts or prohibits directly, or indirectly limits, the
8 acquisition, use, or occupancy of such property for a family day
9 care home for children is void.

10 (d) (1) A prospective family day care home provider, who
11 resides in a rental property, shall provide 30 days' written notice
12 to the landlord or owner of the rental property prior to the
13 commencement of operation of the family day care home.

14 (2) For family day care home providers who have relocated an
15 existing licensed family day care home program to a rental property
16 on or after January 1, 1997, less than 30 days' written notice may
17 be provided in cases where the department approves the operation
18 of the new location of the family day care home in fewer than 30
19 days, or the home is licensed in fewer than 30 days, in order that
20 service to the children served in the former location not be
21 interrupted.

22 (3) A family day care home provider in operation on rental or
23 leased property as of January 1, 1997, shall notify the landlord or
24 property owner in writing at the time of the annual license fee
25 renewal, or by March 31, 1997, whichever occurs later.

26 (4) Notwithstanding any other provision of law, upon
27 commencement of, or knowledge of, the operation of a family day
28 care home on his or her property, the landlord or property owner
29 may require the family day care home provider to pay an increased
30 security deposit for operation of the family day care home. The
31 increase in deposit may be required notwithstanding that a lesser
32 amount is required of tenants who do not operate family day care
33 homes. In no event, however, shall the total security deposit
34 charged exceed the maximum allowable under existing law.

35 (5) Section 1596.890 shall not apply to this subdivision.

36 SEC. 3. Section 1597.43 of the Health and Safety Code is
37 amended to read:

38 1597.43. The Legislature finds and declares all of the following:

39 (a) Small family day care homes operated under the standards
40 of state law constitute accessory uses of residentially zoned and

1 occupied properties and do not fundamentally alter the nature of
2 the underlying residential uses. Small family day care homes draw
3 clients and vehicles to their sites during a limited time of day and
4 do not require the attendance of a large number of employees and
5 equipment.

6 (b) The uses of congregate care facilities and large family day
7 care homes are distinguishable from the uses of small family day
8 care homes operated under the standards of state law.

9 (1) For purposes of this section, a “congregate care facility”
10 means a “residential facility,” as defined in paragraph (1) of
11 subdivision (a) of Section 1502. Congregate care facilities are used
12 throughout the day and night, and the institutional uses of these
13 facilities are primary uses of the facilities, not accessory uses, and
14 draw a large number of employees, vehicles, and equipment
15 compared to that drawn to small family day care homes.

16 (2) Large family day care homes draw a larger number of
17 employees, vehicles, and noise than do small family day care
18 homes and shall not be considered an accessory use.

19 (e) The expansion permitted for family day care homes by
20 Sections 1597.44 and 1597.465 is not appropriate with respect to
21 congregate care facilities, or any other facilities with
22 quasi-institutional uses. Therefore, with these provisions, the
23 Legislature does not intend to alter the legal standards governing
24 congregate care facilities and these provisions are not intended to
25 encourage, or be a precedent for, changes in statutory and case
26 law governing congregate care facilities.

27 SEC. 4. Section 1597.46 of the Health and Safety Code is
28 amended to read:

29 1597.46. With regard to large family day care homes:

30 (a) A city, county, or city and county may prohibit large family
31 day care homes on lots zoned for single-family dwellings.

32 (b) A city, county, or city and county is encouraged, but not
33 required, to do one of the following as it relates to large family
34 day care homes:

35 (1) Classify these homes as a permitted use of residential
36 property for zoning purposes.

37 (2) Grant a nondiscretionary permit to use a lot zoned for a
38 single-family dwelling to any large family day care home that
39 complies with local ordinances prescribing reasonable standards,
40 restrictions, and requirements concerning spacing and

1 concentration, traffic control, parking, and noise control relating
2 to those homes, and complies with subdivision (f) and any
3 regulations adopted by the State Fire Marshal pursuant to that
4 subdivision. Any noise standards shall be consistent with local
5 noise ordinances implementing the noise element of the general
6 plan and shall take into consideration the noise level generated by
7 children. Any permit issued pursuant to this paragraph shall be
8 granted by the zoning administrator, or if there is no zoning
9 administrator by the person or persons designated by the planning
10 agency to grant these permits, upon the certification without a
11 hearing.

12 (3) (A) Require any large family day care home to apply for a
13 permit to use a lot zoned for single-family dwellings. The zoning
14 administrator, or if there is no zoning administrator, the person or
15 persons designated by the planning agency to handle the use
16 permits, shall review and decide the applications. The use permit
17 shall be granted if the large family day care home complies with
18 local ordinances, if any, prescribing reasonable standards,
19 restrictions, and requirements concerning the following factors:
20 spacing and concentration, traffic control, parking, and noise
21 control relating to those homes, and complies with subdivision (f)
22 and any regulations adopted by the State Fire Marshal pursuant to
23 that subdivision. Any noise standards shall be consistent with local
24 noise ordinances implementing the noise element of the general
25 plan and shall take into consideration the noise levels generated
26 by children. The local government shall process any required
27 permit as economically as possible.

28 (B) If a city, county, or city and county elects to implement this
29 paragraph, fees charged for review shall not exceed the costs of
30 the review and permit process. An applicant may request a
31 verification of fees, and the city, county, or city and county shall
32 provide the applicant with a written breakdown within 45 days of
33 the request. Beginning July 1, 2007, the application form for large
34 family day care home permits shall include a statement of the
35 applicant's right to request the written fee verification.

36 (C) If a city, county, or city and county elects to implement this
37 paragraph, not fewer than 10 days prior to the date on which the
38 decision will be made on the application, the zoning administrator
39 or person designated to handle the use permits shall give notice of
40 the proposed use by mail or delivery to all owners shown on the

1 ~~last equalized assessment roll as owning real property within a~~
2 ~~100-foot radius of the exterior boundaries of the proposed large~~
3 ~~family day care home. A hearing on the application for a permit~~
4 ~~issued pursuant to this paragraph shall not be held before a decision~~
5 ~~is made unless a hearing is requested by the applicant or other~~
6 ~~affected person. The applicant or other affected person may appeal~~
7 ~~the decision. The appellant shall pay the cost, if any, of the appeal.~~

8 ~~(e) In connection with any action taken pursuant to paragraph~~
9 ~~(2) or (3) of subdivision (b), a city, county, or city and county shall~~
10 ~~do all of the following:~~

11 ~~(1) Upon the request of an applicant, provide a list of the permits~~
12 ~~and fees that are required by the city, county, or city and county,~~
13 ~~including information about other permits that may be required~~
14 ~~by other departments in the city, county, or city and county, or by~~
15 ~~other public agencies. The city, county, or city and county shall,~~
16 ~~upon request of any applicant, also provide information about the~~
17 ~~anticipated length of time for reviewing and processing the permit~~
18 ~~application.~~

19 ~~(2) Upon the request of an applicant, provide information on~~
20 ~~the breakdown of any individual fees charged in connection with~~
21 ~~the issuance of the permit.~~

22 ~~(3) If a deposit is required to cover the cost of the permit,~~
23 ~~provide information to the applicant about the estimated final cost~~
24 ~~to the applicant of the permit, and procedures for receiving a refund~~
25 ~~from the portion of the deposit not used.~~

26 ~~(d) A large family day care home shall not be subject to the~~
27 ~~provisions of Division 13 (commencing with Section 21000) of~~
28 ~~the Public Resources Code.~~

29 ~~(e) Use of a single-family dwelling for the purposes of a large~~
30 ~~family day care home shall not constitute a change of occupancy~~
31 ~~for purposes of Part 1.5 (commencing with Section 17910) of~~
32 ~~Division 13 (State Housing Law), or for purposes of local building~~
33 ~~and fire codes.~~

34 ~~(f) (1) Large family day care homes shall be considered as~~
35 ~~single-family residences for the purposes of the State Uniform~~
36 ~~Building Standards Code and local building and fire codes, except~~
37 ~~with respect to any additional standards specifically designed to~~
38 ~~promote the fire and life safety of the children in these homes~~
39 ~~adopted by the State Fire Marshal pursuant to this subdivision.~~
40 ~~The State Fire Marshal shall adopt separate building standards~~

1 specifically relating to the subject of fire and life safety in large
2 family day care homes which shall be published in Title 24 of the
3 California Code of Regulations. These standards shall apply
4 uniformly throughout the state and shall include, but not be limited
5 to all of the following:

6 (A) The requirement that a large family day care home contain
7 a fire extinguisher or smoke detector device, or both, which meets
8 standards established by the State Fire Marshal.

9 (B) Specification as to the number of required exits from the
10 home.

11 (C) Specification as to the floor or floors on which day care
12 may be provided.

13 (2) Enforcement of the provisions described in paragraph (1)
14 shall be in accordance with Sections 13145 and 13146. A city,
15 county, city and county, or district shall not adopt or enforce any
16 building ordinance or local rule or regulation relating to the subject
17 of fire and life safety in large family day care homes that is
18 inconsistent with those standards adopted by the State Fire Marshal,
19 except to the extent the building ordinance or local rule or
20 regulation applies to single-family residences in which day care
21 is not provided.

22 (g) The State Fire Marshal shall adopt the building standards
23 required in subdivision (e) and any other regulations necessary to
24 implement this section.